



INTERNATIONAL JOINT COMMISSION

*Canada 1909-*

HEARING AND ARGUMENT

IN THE MATTER OF THE

APPLICATION OF THE INTERNATIONAL  
LUMBER COMPANY FOR APPROVAL OF THE  
OBSTRUCTION OF THE WATERS OF THE  
RAINY RIVER AT INTERNATIONAL  
FALLS, MINN.

MINNEAPOLIS, MINN., JANUARY 22-24, 1917

APPLICATION FILED AUGUST 23, 1916



WASHINGTON  
GOVERNMENT PRINTING OFFICE  
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CANADA.

CHARLES A. MAGRATH, CHAIRMAN  
HENRY A. POWELL, K. C.  
P. B. MIGNAULT, K. C.

LAWRENCE J. BURPEE, *Secretary.*

UNITED STATES.

OBADIAH GARDNER, CHAIRMAN.  
JAMES A. TAWNEY.  
R. B. GLENN.

WHITEHEAD KLUTZ, *Secretary.*



# INTERNATIONAL JOINT COMMISSION.

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## HEARING AND ARGUMENT

IN THE MATTER OF THE

APPLICATION OF THE INTERNATIONAL LUMBER CO. FOR APPROVAL  
OF THE OBSTRUCTION OF THE WATERS OF THE RAINY RIVER  
AT INTERNATIONAL FALLS, MINN., UNITED STATES OF  
AMERICA, OPPOSITE THE TOWN OF FORT FRANCES,  
IN THE PROVINCE OF ONTARIO,  
DOMINION OF CANADA.

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MINNEAPOLIS, MINN., *January 22, 1917.*

Pursuant to notice, the commission met at 10 o'clock a. m. on Monday, January 22, 1917, in the Hotel Radisson, Minneapolis, Minn., Mr. Gardner presiding.

Mr. GARDNER. Gentlemen, owing to delay caused by the severe storm, two of the members of the commission have not yet arrived, but we will proceed with the hearing in their absence. The secretary will please read the notice of the meeting.

Secretary Kluttz thereupon read the notice, which is as follows:

DECEMBER 30, 1916.

GENTLEMEN: In confirmation of my telegram of December 28 I wish to state that the International Joint Commission will meet at Minneapolis, Minn., Monday, January 22, to hear the application of the International Lumber Co. for a boom in Rainy River. The hearing will be held in the council chamber of the city hall and will begin at 10 o'clock. Reservations have been made for the commission at the Radisson Hotel.

Very truly, yours,

\_\_\_\_\_, *Secretary.*

Secretary Kluttz stated that substantially the above notice was sent to the following on the American side:

The Secretary of State.

The Secretary of War.

The Governor of Minnesota.

C. J. Rockwood, Minneapolis, Minn.

C. J. Lenander, Bancroft, Iowa.

Clapp & Macartney, St. Paul, Minn.

The International Falls Echo and Journal, International Falls, and various other newspapers.

Secretary Kluttz also stated that a subsequent letter informed them that the meeting would be held in the gold room of the Hotel Radisson.

Secretary Burpee stated that similar notices were sent on the Canadian side to the Federal Government, the provincial departments, the town of Fort Frances, Ontario, and other interests, and was published in the Fort Frances Times and the Canadian Gazette.

The following appearances were announced:

Lieut. Col. Harry Burgess, Corps of Engineers, United States Army, Detroit, Mich., representing the United States district engineers' office, Detroit, Mich.

Lieut. Col. E. H. Schulz, Corps of Engineers, United States Army, representing the United States district engineers' office, Detroit, Mich.

Edward Anderson, K. C., of Winnipeg, representing the Dominion of Canada.

Frank H. Keefer, K. C., of Winona, Ontario, representing the Province of Ontario.

W. J. Stewart, of Ottawa, chief hydrographer of the Dominion of Canada and chairman of the Lake of the Woods Technical Board.

S. S. Scovil, of Ottawa, representing the Lake of the Woods Technical Board.

S. J. Chapleau, of Ottawa, representing the public works department of the Dominion of Canada.

C. J. Rockwood, of Minneapolis, Minn., representing the International Lumber Co.

A. D. George, of Fort Frances, Ontario, representing the Fort Frances Pulp & Paper Co. (Ltd.), and the Ontario & Minnesota Power Co. (Ltd.).

A. G. Murray, of Fort Frances, Ontario, representing the town of Fort Frances.

A. W. Clapp, of St. Paul, Minn., representing the Shevlin-Clarke Co. (Ltd.).

W. T. Moodie, of Winnipeg, representing the Canadian Northern Railway.

C. J. Lenander, of Bancroft, Iowa.

Mr. TAWNEY. Mr. Clapp, I understand that you wish to file a statement.

Mr. CLAPP. I would like to file a statement which has been handed to the secretary. This comes rather late. We thought that inasmuch as we had no special objection to the granting of this application it might not be necessary for us to file a statement, and then it occurred to us that it would be only right to inform the commission of the position of our water-log boom ground, and that is the main purpose for which the statement is filed.

Mr. TAWNEY. Then, it is not in the nature of a reply statement under the rules of the commission?

Mr. CLAPP. No, sir; it is a statement giving the commission information.

Mr. TAWNEY. Is there any objection on the part of the applicant to its being received?

Mr. ROCKWOOD. We do not object.

Mr. TAWNEY. Does anyone else object? Mr. Anderson, is there any objection on your part?

Mr. ANDERSON. We have no objection; no, sir.



Mr. GARDNER. There being no objection, the statement of the Shevlin-Clarke Lumber Co. will be received and placed on file.

Mr. MAGRATH. Have you a statement to file, Mr. Rockwood?

Mr. ROCKWOOD. We filed our application and then filed a reply statement after the Dominion Government and the town of Fort Frances had filed their statements.

Mr. MAGRATH. In reading the correspondence I was under the impression that you contemplated filing something further at this meeting.

Mr. ROCKWOOD. It is filed with the secretaries of the commission, and it was so filed with the consent of the Canadian Government and the town of Fort Frances. They gave formal consent, as I understand.

Mr. TAWNEY. I haven't a copy of your answer to the reply statement.

Mr. ROCKWOOD. I sent a large number of copies to the secretaries.

Secretary BURPEE. The correspondence shows that the Dominion Government and the town of Fort Frances agreed to the filing of that statement.

Mr. ROCKWOOD. If it is necessary, I ask now that this statement in reply be filed.

Mr. TAWNEY. The reason you do that is because it was not filed within the time prescribed under the rules?

Mr. ROCKWOOD. Yes, sir.

Mr. TAWNEY. Then, if there is no objection, Mr. Chairman, I suggest that it be received.

Secretary BURPEE. None of the documents were filed under the rules. Every document since the application has been overdue.

Mr. MAGRATH. I raised the question, Mr. Rockwood, because I see that a telegram was sent to you by Mr. Burpee stating that he thought it was quite satisfactory for you to file it but that it must be confirmed by the commission at the meeting.

Mr. ROCKWOOD. I make the application accordingly.

Mr. BURPEE. That would apply to the others, too, sir. I think the commission should confirm all of them.

Mr. TAWNEY. Mr. Chairman, in view of the fact that none of the statements that were filed in answer to the application was filed within the time prescribed by the rules, in order to have the record clear I would suggest that inquiry be made at this time as to whether there is any objection to their being filed now as of the date at which they were filed, and if there is no objection, I move that the commission consider them as received and that they be filed.

Mr. ROCKWOOD. We do not object, Mr. Chairman.

Mr. TAWNEY. I know you do not, but I wanted the record to show that an opportunity has been given to everybody here to object.

Mr. ANDERSON. As everybody is in default, I think no one can very well object.

Mr. GARDNER. There being no objection, they will be received and filed.

Mr. MAGRATH. Mr. Chairman, I question the desirability of proceeding in the absence of counsel for the United States Government. It is quite agreeable to me that we should do so, and if there are any interests here that are anxious to get away, of course, I assume we should hear them now.



Mr. GLENN. Of more importance is the fact that two of the commissioners are not here.

Mr. TAWNEY. Mr. Wyvell has filed a statement on behalf of the Government of the United States. As the statement is a very brief one, I will read it. It is as follows:

In the matter of the application of the International Lumber Co. for approval of the plan of a boom in the Rainy River at International Falls, Minn., United States of America, opposite the town of Fort Frances in the Province of Ontario, Dominion of Canada.

*To the honorable the International Joint Commission, Washington, D. C., and Ottawa, Canada:*

The foregoing application is submitted to the International Joint Commission with the suggestion that the present and future needs of navigation in the Rainy River be carefully safeguarded in any decision which may be made herein. In this connection it is pointed out that the effect of the construction of the boom according to the plans submitted will be to confine the navigation along the boom entirely or almost entirely to the Canadian side of the international waters, and it is further suggested that the rights to the free use of the waters on the part of citizens of both countries for navigation purposes be carefully preserved.

Respectfully submitted.

MANTON M. WYVELL,  
*Counsel for the United States.*

Mr. GLENN. Had we not best adjourn until 2 o'clock in order to give these gentlemen who are absent a chance to get here?

Mr. TAWNEY. It is satisfactory to me, gentlemen.

Mr. MAGRATH. I am perfectly willing to go on.

Mr. ANDERSON. According to the written statement of Mr. Wyvell the position of the Canadian Government is substantially the same. I do not know whether that makes any difference in proceeding without Mr. Wyvell or not. We would be looking after the questions he raises there.

Mr. MAGRATH. I am willing that we should proceed, Mr. Chairman.

Mr. TAWNEY. Of course the circumstances which have necessitated the delay are unusual. For the benefit of nonresidents here I will say that this weather condition is something that has not happened before for 30 years. In view of that fact, and also in view of the absence of two of our colleagues on the commission, who are detained for reasons over which they have no control, it might be well for us to take a recess until 2 o'clock this afternoon. Unless it would inconvenience some of the parties present here, I would suggest that such a recess be taken.

Mr. GARDNER. Is there anyone present that such action will cause any serious inconvenience? If not, the commission will take a recess until 2 o'clock.

(Thereupon, at 11 o'clock a. m., a recess was taken until 2 o'clock p. m.)

#### AFTER RECESS.

The commission reconvened at 2 o'clock p. m.

Mr. GARDNER. Mr. Rockwood, are you ready to proceed?

Mr. ROCKWOOD. I think so, Mr. Chairman.

Mr. GARDNER. I do not think we will gain anything by any further delay.



Mr. ROCKWOOD. This application by the International Lumber Co. is brief, and I will read it with the exception of the appendices:

Application of International Lumber Co. for approval of plans for boom in Rainy River at International Falls.

*To the Secretary of War, Washington, D. C.*

SIR: The undersigned, International Lumber Co., respectfully represents that it is a corporation, organized under the laws of the State of Minnesota for the purpose, among other things, of manufacturing lumber, and that it is engaged in the operation of a large sawmill at International Falls, Minn.; that its mill is located on the bank of Rainy River in the easterly part of section 34, town 71 north, range 24; that the only feasible and practicable method of supplying the mill with logs is by placing them in booms in the river at and above the mill, to wit, along the front of lot 1, in section 34, and the entire front of section 35, in said town and range; and that for such purpose it is necessary to maintain booms and sorting gaps in the river for storing, handling, and sorting, not only the logs intended for the company's mill, but also such other forest products as may become mingled therewith.

The company has been using booms, which were constructed under a permit granted to the Minnesota & Ontario Power Co., but the booms have become inadequate and require reconstruction.

The company respectfully requests the approval of the accompanying plans for such booms and authority to construct and reconstruct in accordance with such plans. The company finds your authority for such approval in section 10 of the act, March 3, 1899, volume 30, Statutes at Large, chapter 425, page 1151.

Appended to this application and printed herewith are—

1. A copy of said section 10 of the act, March 3, 1899.
2. A copy of the articles of incorporation of International Lumber Co. and copy of the amendments thereto, duly certified by the secretary of state.
3. A certificate by the secretary of the company showing the organization and present officers of the company.
4. The necessary duplicates and copies of this application required by the rules of the International Joint Commission.
5. The plans in triplicate, on which approval is requested.

INTERNATIONAL LUMBER Co.,  
By E. W. BACKUS, *President*.  
C. J. ROCKWOOD,

*Attorney for Applicant,*  
606 Andrus Building, Minneapolis, Minn.

MAY 15, 1916.

Section 10 of the act, March 3, 1899, chapter 425, volume 30, Statutes at Large, page 1151:

SEC. 10. That the creation of any obstruction not affirmatively authorized by Congress to the navigable capacity of any of the waters of the United States is hereby prohibited, and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States outside established harbor lines or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill or in any manner to alter or modify the course, location, condition, or capacity of any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater or of the channel of any navigable water of the United States unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same.

Mr. TAWNEY. Mr. Rockwood, in your statement of the nature of the order desired I notice you say, "The approval of this commission is desired under section 10," which you quote. I read hastily section 10, as quoted in your application, but I do not find any such authority for the approval by this commission



Mr. ROCKWOOD This is addressed to the Secretary of War, and it is the authority of the Secretary of War, in section 10 of the river and harbor bill of 1899, which is printed on page 3.

Mr. TAWNEY. Then, the request in paragraph 3 to the effect that "the company respectfully requests the approval of the accompanying plans for such boom" is addressed to the Secretary of War and not to this commission?

Mr. ROCKWOOD. It is addressed directly to the Secretary of War with the understanding that it would be referred to this commission before being allowed by the Secretary of War.

Mr. TAWNEY. In what part of your application is the nature of the order desired from this commission stated? Under either paragraph (a) or paragraph (b) of rule 6 of the rules of procedure of this commission the application is supposed to set forth the nature of the order desired, conforming to the usual practice in the courts where the plaintiff prays for certain relief and states the nature of the relief desired. That was the purpose of this rule, and I was trying to ascertain from this correspondence just what is the nature of the order desired from this commission.

Mr. ROCKWOOD. What we desire is an order approving the plans. It may be that I was wrong, and apparently I was. Perhaps I did not study the rule sufficiently.

Mr. TAWNEY. You will observe that under paragraph (a) of rule 6 where one or the other of the Governments on its own initiative seeks the approval of the commission for the use, obstruction, or diversion of the waters in respect to which under Articles III and IV the approval of the commission is required, it shall file with the commission an application setting forth as fully as may be necessary for the information of the commission the facts upon which the application is based and the nature of the order of approval desired.

Now, this may not be strictly an application on behalf of the Government or for its benefit, but paragraph (b) says:

Where any private person seeks the approval of the commission for the use, obstruction, or diversion of such waters he shall first make written application to the Government within whose jurisdiction the privilege desired is to be exercised, to grant such privilege, and upon such Government, or proper department thereof, transmitting such application to the commission, with the request that it take appropriate action thereon, the same shall be filed and be proceeded with by the commission in the same manner as an application on behalf of one or the other of the Governments. All applications by private persons should conform, as to their contents, to the requirements of subdivision (a) of this rule.

In order to ascertain just what the nature of the order is which the applicant desires in this case I was curious to know where the nature of the order was stated. I did not know whether you intended this first paragraph on page 2 of the application to the Secretary of War to mean the nature of the order; but I now see that it is your application to the Secretary of War for his approval of your plans and not an application to this commission.

Mr. ROCKWOOD. And his reference to this commission.

Mr. TAWNEY. There is nothing to indicate the nature of the order of approval which this commission is asked to grant. In fact, there is nothing in this correspondence to show that the commission has jurisdiction in this case where its decision when rendered is final.

Mr. ANDERSON. Has this matter been referred by the Secretary of War to this commission? Is that the way in which it comes up?



Mr. TAWNEY. Yes; it has been referred under paragraph (b) of rule 6.

Mr. ROCKWOOD. Now, I take it, Mr. Commissioner, that this is an application which we could not have made to this commission directly; that we could only apply to the Secretary of War for his approval. The application being in his hands, it was for him to determine whether he should act upon it under his own authority, or whether he should seek the approval of this commission before his action.

Mr. TAWNEY. The Secretary of War has already approved of the plans. Under the decision of this commission in the Michigan Northern Power Co. case, the authority having previously been given by the Government of the United States, subject to the approval of the plans by the Secretary of War, that approval was necessary before submitting the matter to this commission for its approval. Under rule 6 it is contemplated that applications for approval under Article III or Article IV of the treaty may be made either upon the initiative of the Governments or upon the initiative of private parties; but when initiated by private parties the application shall be transmitted to the commission by one or the other of the two Governments. However, the nature of the order and the facts and circumstances upon which the application is based are supposed to be stated just the same as though the application was made direct to the commission by either Government. Then, if the Governments approve of submitting the matter to the commission, provided it is submitted in proper form, it is submitted as it comes to them.

I might say, for the information of you gentlemen, as one of the members of the commission who participated in the preparation of the rule, the reason for the requirement that applications on behalf of private parties should be transmitted by the Governments was to prevent private interests in either country from attempting to invoke the jurisdiction of this commission without the approval of the Government concerned until that Government had passed upon the question of whether or not it was a matter that should be submitted under the treaty. So far as the form of the application is concerned, it was intended that the application submitted to the Government for transmission to this commission should contain all the facts and circumstances bearing upon the application and the nature of the order desired, just the same as you would proceed in the initiation of a case in the courts of either country. I do not call attention to this because the application in this case is defective in this respect, but inasmuch as our decision in this case is final and we are blazing a new trail in the matter of the settlement of controversies or questions of difference between two nations, the form of procedure should be in accordance with the rules the commission has adopted in obedience to the commands of the high contracting parties, and which rules have been approved by both Governments.

Mr. ROCKWOOD. Well, Mr. Commissioner, I can add only this, which, perhaps, is a repetition: When I made this application I did not know whether it was one that would come to this commission or not. The application was made to the Secretary of War without knowing what view he would take as to whether he ought to act upon it. If he had acted upon it and approved the plans, I think we should have assumed that that was sufficient. He took the view that

he should not act upon it until it was referred to the commission, and he made such reference. I simply got word that the papers had been transmitted to the commission and its action would be sought before the action of the Secretary of War. The commission took the application and issued an order for a hearing. I take it. I did not make that order for a hearing or expressly ask for it. I received word from the commission that the application was in its hands and that a hearing would be held, and I paid no further attention to the form of the application.

Mr. TAWNEY. In seeking authority for the construction of this boom you took into consideration, did you not, the question of whether or not it would raise the level of the water on the other side of Rainy River, and, if it did, the obstruction could not be placed there without the approval of this commission?

Mr. ROCKWOOD. Well, going back, the history of it is this: That the boom was constructed and is there now in almost the proposed location, except where the proposed location straightens a few kinks, and it was built before this commission was organized. The Secretary of War, or his representative in St. Paul, Maj. Peek, called our attention to the fact that the boom as constructed differed in a detail, at least—I do not know now how seriously—from the former plan that had been authorized. He looked the whole situation over and decided what he thought the boom ought to be and prepared this plan and asked us to apply to the Secretary of War for approval, which we did.

Now, it is really a modification, and a comparatively slight modification, of a structure that was built before this commission was organized. I did not know whether that modification required the approval of this commission or not. I took the suggestion of Maj. Peek and made the application, a suggestion which I supposed he made under authority from his superiors. Then the Secretary of War took the view that it should be referred, and referred it.

Mr. GLENN. Why is it not properly before us in every respect, then?

Mr. ROCKWOOD. I take it that the prayer that we made for the approval of the Secretary of War is a prayer for approval by this commission of those plans when the Secretary refers the petition to this commission.

Mr. GLENN. I do not see why it is not properly before us.

Mr. TAWNEY. I do not raise the question of whether the application is in proper form or not. Personally, I do not think it is; but I do not intend to raise that question. However, in the interest of some uniformity of practice before this commission in matters coming before us under Articles III and IV. I think it is important that those who have occasion to invoke the jurisdiction of the commission should conform as nearly as possible to the rules regarding procedure in order that we may establish a code of procedure in that respect.

Mr. ROCKWOOD. I am willing to admit, with whatever embarrassment to myself, that I did not study procedure to that point when I prepared this application in accordance with the suggestion of the War Department, and it may be that I was entirely wrong.

Two statements in response to that application were filed, one by the town of Fort Frances and one by the Dominion Government. The statement by the Dominion Government incorporates, among



other things, the statement by the town of Fort Frances. We filed a statement in reply, and very recently a statement was filed by the counsel for the Government of the United States, Mr. Wyvell, and to-day a statement has been presented by the Shevlin-Clarke Lumber Co.

If it is a suitable thing to do, I will go on and read those statements so as to have the situation properly before the commission.

Mr. TAWNEY. Before you do that, Mr. Rockwood, will you kindly state for the information of the commission what the nature and extent of this structure is and what purpose it is intended to serve, so that when you read these statements to which you refer they will be more intelligible to the commission than they would otherwise be?

Mr. ROCKWOOD. This blue print which I hold in my hand is a copy of the blue print for which approval is asked. It is marked "International Lumber Co. booms in Rainy River at International Falls, Minn., prepared for the United States Engineers' office, St. Paul, Minn., February, 1916."

The commission is so familiar with the situation that I think I can make an explanation that will be understood. At the extreme left of the map, as I have now unfolded it, is the dam at International Falls, the paper mill on the Minnesota side with its accessories, and the paper mill on the Fort Frances side with the woodworking plant immediately at the Falls. The mill of the International Lumber Co. is located at this point [indicating]. It might suitably have been marked "Sawmill."

Mr. TAWNEY. About how far is it above the dam?

Mr. ROCKWOOD. A third of a mile, maybe a little more; between a third and a half.

Mr. GARDNER. Is that a steam plant?

Mr. ROCKWOOD. I think the lumber mill is operated by electricity from the Falls. That is my recollection. It is possible that they burn the refuse from the mill, but I think not. The refuse from the mill is taken to the paper mill and burned there. Up toward the right, on the north bank of the river, are the mills of the Shevlin-Clarke Co.

Mr. TAWNEY. That is about how far from the dam?

Mr. ROCKWOOD. That is a mile and a quarter, perhaps. Its booms, which are shown on another map to which I will call attention in a moment, extend from its plant, lying out a little ways in the river, upward, and occupy a large part of the bay on the north side of the river between the Shevlin-Clarke plant and Pithers Point.

Mr. GARDNER. Is that above the railroad bridge?

Mr. ROCKWOOD. It is all below the railroad bridge.

Mr. TAWNEY. Pithers Point is just below the outlet of Rainy Lake?

Mr. ROCKWOOD. It is at the outlet, and the Shevlin-Clarke boom is in this big bay between that and the mill.

On the Minnesota side there is no capacity available for the storage of logs, pulp wood, and other similar products which have to be handled. The International Lumber Co. controls the shore as far as this little creek that comes in from the south. The line runs approximately through the center of that creek and the proposed boom begins at that point and runs down the river.

Mr. TAWNEY. How far is that creek below the outlet of Rainy Lake?



Mr. ROCKWOOD. It is perhaps three quarters of a mile.

Mr. GARDNER. Is the boom in existence at that point now?

Mr. ROCKWOOD. It is; yes; but not built exactly on the red line shown here. When the boys went in with pile drivers they were not correctly directed and they did not follow as true lines as they should have followed, and the boom is not straight. There are one or two kinks that have been put in the boom since it was constructed, and I will explain how those happened to be there.

The raw materials for these three mills—the International Lumber Co.'s mill, the Minnesota & Ontario Power Co.'s paper mill on the Minnesota side, and the Fort Frances Pulp & Paper Co.'s mill on the Fort Frances side, have to come very largely in and out of this water immediately above, and to some extent they have to be stored. They can not be handled from the cars to the grinders. It is not feasible to handle them except by putting them in water and it is not feasible to grind as the wood comes, or, in other words, to deliver the raw material so uniformly as consumption requires. The same is true of the lumber mill; there must be storage.

Without stopping to give any figures or quantities—Mr. Backus will give those—I would say that the space that is available in the river is entirely inadequate for the 3 mills. If the whole surface of the river from bank to bank were occupied, it would still be crowded. It is at best very inadequate. These two industries on the Minnesota side, as the commission knows, are the only industries of any considerable magnitude in Minnesota within a radius of, say, a hundred miles. And right through this one little throat passes the raw material of the industries that support very largely the population of northern Minnesota within a large radius.

The Fort Frances mill gets its lumber largely from the Canadian side and, while it is not relatively so large a factor in the industries of Canada or of that Canadian district, it is a large factor in those industries. The materials come in very largely by the Canadian Northern Railway, and it has no access to the water except the tiniest bit of a piece of track right here at the mill. I believe it is possible to dump a little bit of wood—

Mr. BACKUS (interrupting). No.

Mr. ROCKWOOD. Then, it is not possible to dump any wood from the Canadian Northern tracks into the water, and that material as it comes up from down the valley or from the upper lake region is carried around by Pithers Point, over to a junction with the Minnesota, Dakota & Western, and brought back to the west again and in here to the south bank of the river at the upper end of this boom. It is there put in the water, and as the mill needs it it is taken out again and put into what are called sack rafts or booms, and towed down to the pond of the Fort Frances Pulp & Paper Co.

These facilities have to take care of those three industries. I do not know of any way in which they can operate without these facilities, and, if they could operate at all, it would be at such a terrific loss that they could not compete with other industries that have facilities.

Mr. GARDNER. All of the material that is transported in Canada has to come up, around, and down on the other side of the river; is that the idea?

Mr. ROCKWOOD. That is right, Mr. Chairman. Now, the commissioners will remember that there are railroad tracks close to the bank of the river on the International Falls side. They run down and cross the bridge right above the mills. This map shows a connection with the tracks of the Canadian Northern Railway. In that respect the map is wrong. The Canadian Northern Railway has never permitted any connection to be made there.

Mr. MAGRATH. Have you ever made an effort to have them do so, Mr. Rockwood?

Mr. ROCKWOOD. Yes; there have been many efforts made. I could not detail them, but Mr. Backus is familiar with them. I can only state this in general, that the Canadian Northern Railway has demanded such terms that they could have been accepted only with very great loss, and rather than accept the terms which they did propose this material is all hauled that 6 or 8 miles, brought to the Minnesota side, and put in the water there and then towed back across—a bag at a time.

Mr. GARDNER. Is it transported over the Canadian Northern Railway from the Canadian side?

Mr. ROCKWOOD. Yes; the raw material comes in from the Canadian road above, from the East and from the West, and is put on this line, you might call it the Duluth line, as it leads toward Duluth, is taken up across the river to Pithers Point and over to the junction a little way to the south and then back again to International Falls.

Mr. MAGRATH. Do you happen to know the grounds for the company's refusal to give you those facilities?

Mr. ROCKWOOD. I would not dare state them. Mr. Backus knows them. I have heard the matter discussed, but I never took part in discussions with the Canadian Northern officials and I never undertook to inform myself carefully. I would not want to go into detail because I would very likely be wrong.

I will say further that the product of the Fort Frances Pulp & Paper mill is consumed very largely in Winnipeg and western Canada. The mill stands within a hundred feet of the Canadian Northern tracks, but every pound of paper that goes west makes the same circuit in the reverse order. It goes up the river on the M. D. & W., strikes the main line of the Canadian Northern beyond Pithers Point, and comes back within a few hundred feet of the point where it started at the mill and goes on west.

Mr. MAGRATH. Did you ever bring that matter to the attention of the railway commission at Ottawa?

Mr. ROCKWOOD. It has been brought to their attention, as I understand, and they have tried to intercede and bring the parties together, but without success. They have never made any mandatory orders, as I understand, but there the situation has existed now for four years or so, since the operation of the mill began, and it existed during the entire period of construction of the mill, to the great embarrassment of the Fort Frances Pulp & Paper Co. It was a material increase in the cost of the mill not to be able to use the Canadian Northern Railway.

Mr. GLENN. The railroads generally want all the freightage they can get.

Mr. ROCKWOOD. Well, they get this freight. All the Canadian portion of the freight has to go to their line.



Mr. GARDNER. They get a longer haul, do they not?

Mr. ROCKWOOD. I do not know about rates: I do not know whether rates are higher because of this situation, but every stick of pulp wood has to come over that road; there is no other road to bring it. So in that respect they know that they can not lose.

Mr. GARDNER. If it were possible to make that connection there at the mills, or in that proximity, would the raw material be deposited there?

Mr. BACKUS. It would not make any difference. There is no room at all there.

Mr. ROCKWOOD. A very small portion at a time, if any: but to handle the material on that side it would be necessary to construct a boom on the Canadian side from the Shevlin-Clarke mill down to the Fort Frances Pulp & Paper Co.'s mill. That has been proposed and objected to, and the company has never been able to get that boom in. Consequently, its only recourse has been to rely on the boom of the International Lumber Co.

Mr. TAWNEY. Mr. Rockwood, you spoke about the application in its present form differing only slightly from the construction that now exists. In what respect does it differ?

Mr. ROCKWOOD. The Canadian Government has prepared one large map which covers the same territory as the map that I have referred to before, and some besides. The mill of the International Lumber Co. is here [indicating].

Mr. TAWNEY. About a third of a mile east of the dam at International Falls?

Mr. ROCKWOOD. Approximately. The plant of the Minnesota & Ontario Power Co. is shown in much greater detail, also that of the Fort Frances Pulp & Paper Co., although it is called Ontario & Minnesota Paper Co., which is an error in name, and this red line is marked "international boundary."

When the present boom was constructed there was nothing to mark the international boundary. It was a question of debate as to the precise principles upon which that boundary was to be located, but if the principles had been known, there had been no survey and no agreement upon a definite line.

Mr. ANDERSON. You have stated, Mr. Rockwood, that the international boundary is marked there in red. Is it not marked in yellow?

Mr. ROCKWOOD. Maybe I am color blind.

Mr. ANDERSON. I do not know about that, but I know that the location of your boom is marked in red.

Mr. ROCKWOOD. Perhaps it is yellow. It is the line in broken sections.

Mr. TAWNEY. That line is marked in yellow.

Mr. ROCKWOOD. Yes: it is marked in yellow. Now, as I understand this, the Boundary Commission has been working on that line and has tentatively adopted—

Mr. TAWNEY. Well, that survey is complete, is it not?

Mr. ROCKWOOD. The last I knew of the situation it was not. It may be that it is complete.

Mr. TAWNEY. I think it was completed last year.

Mr. ROCKWOOD. Maj. Peek shows that line on his map, and with my eye I can scarcely distinguish one from the other. He has

marked it, "Tentative location of international boundary line. Dominion of Canada. United States of America."

Mr. ANDERSON. That is the same line that is marked on the Canadian Government map, is it not?

Mr. ROCKWOOD. I am not sure whether it is just the same or not. With my eye I can not detect any difference, but I am not sure whether they are the same.

The boom as constructed is shown by these circles intended to indicate piling, or clusters of piling, and shaded red on the map at each circle, and I will follow this with my pencil. At this point [indicating] for a little way it is north of the boundary. Here again it is north of the boundary for a short distance.

Mr. TAWNEY. As now constructed?

Mr. ROCKWOOD. As now constructed. At this point [indicating] it is again north of the boundary, and at this point, at its extreme upper end, it just touches the boundary. As I say, when that was put in there was no way of knowing just where the boundary was. At one of these points at which it crosses the boundary the construction came about in this way: The pulp wood for the Fort Frances Pulp & Paper Co. was put into the river at the upper end of the boom, and the means adopted to get it down to the wood room were to pick up sack booms at the upper end of the material, tow them up around the upper end of the boom out into the boat channel and down to the mill. That took them through the boat channel, where it was narrowest, namely, between the upper boom and the Shevlin-Clarke boom, which caused some inconvenience to both. The sack raft is an awkward thing to handle and can not be handled in a narrow passage without inconvenience to boats.

Mr. MAGRATH. Roughly speaking, what would its dimensions be?

Mr. ROCKWOOD. How wide and how long, Mr. Backus, would a sack raft be?

Mr. BACKUS. About 100 feet wide and maybe 200 or 300 feet long.

Mr. ROCKWOOD. It is made by putting booms end to end, spreading out and filling up with logs. I am informed that the Canadian customs officials requested that a way be found to avoid bringing the logs through that boat channel. They suggested making a gap at this point [indicating] and putting piling out a little way in the stream, so that the open end of a sack boom could be hung on that gap.

Mr. MAGRATH. When you say "this point," you mean about the center of the boom?

Mr. ROCKWOOD. Yes; a little above the center.

Mr. TAWNEY. That gap is in the existing boom?

Mr. ROCKWOOD. That gap is in the existing boom. It was not put in originally.

Mr. BACKUS. I do not think you have explained that correctly. This is the way the boom has been there for two or three years.

Mr. ROCKWOOD. Yes; that is what I meant to explain.

Mr. TAWNEY. You are explaining now the conditions as they exist in the river at the present time?

Mr. ROCKWOOD. As they are now and as they have been for a number of years.

Mr. TAWNEY. You propose to follow that with such changes as you now desire?



Mr. ROCKWOOD. That is true, and those changes consist of very little more than straightening the line and keeping it entirely south of the boundary.

Mr. TAWNEY. But your present intention is to give us information as to the existing conditions from the map that you are now using?

Mr. ROCKWOOD. That is right.

Mr. ANDERSON. Mr. Rockwood has referred to some request made by the Canadian customs officials. I know nothing about such a request, but whatever it is I would ask that it be filed.

Mr. TAWNEY. He is not producing his evidence now.

Mr. ROCKWOOD. And I do not insist that it had any official force, that it had any legality. I do not know that it had. Perhaps the application ought to have been made to the department of public works, or some other department.

Mr. ANDERSON. I just wanted to know the nature of the request.

Mr. ROCKWOOD. I did not know myself about that until Capt. George told me since he reached Minneapolis. I did not know just how this particular kink happened to be there.

Mr. GLENN. Mr. Rockwood, suppose that railroad could be induced or forced to do away with that rule they have for handling your stuff—

Mr. BACKUS (interrupting). It would not make any difference. There is no room for the wood on the Canadian side anyway.

Mr. MAGRATH. There is lots of territory over there.

Mr. BACKUS. Not that you can get at the river with.

Mr. ROCKWOOD. I expect to put Mr. Backus on the stand.

Now, in brief, Mr. Chairman, our whole purpose is first to comply with the law and free ourselves from criticism on both sides. If we need to make any application to the Dominion Government, we are ready to make it and set ourselves right if we are wrong. Our purpose is to keep those industries running in which a very large amount of capital has been invested and which are so vital to the prosperity of both communities—the Minnesota and the Ontario communities in that vicinity.

Mr. TAWNEY. Your authority for the existing structure and the proposed changes in that existing structure on the United States side of the line exists under the law of the United States at the present time, does it?

Mr. ROCKWOOD. I think so, Mr. Commissioner.

Mr. MAGRATH. There was a permit given for the construction of that boom some years ago?

Mr. ROCKWOOD. Yes; there was a permit given. I think it is said that that boom does not correspond strictly with the permit, and it was in view of that fact that Maj. Peek looked over the whole situation and made the layout which is shown in the plan that we filed with the Secretary of War, or adopted rather at his suggestion, and on which our application was based.

Mr. TAWNEY. Is the construction to be wholly on the United States side of the line?

Mr. ROCKWOOD. It is. We do not ask here for approval for anything on the Canadian side, but simply for works wholly on the Minnesota side.

Mr. TAWNEY. I assume that before you conclude you will show that so far as this obstruction is concerned that part of Article III of the treaty has been complied with which prohibits any obstructions, except those heretofore permitted or those hereafter authorized by the Government within whose jurisdiction the obstruction is to be placed, and then only with the authority or approval of this commission?

Mr. ROCKWOOD. Mr. Commissioner, as I explained, those structures were placed there under authority granted before this commission was organized and at least in part—yes, almost wholly—before the treaty.

Mr. TAWNEY. Then it would come under the provisions of Article III of the treaty, in which are used the words “heretofore permitted”?

Mr. ROCKWOOD. Yes; that is right.

Mr. GLENN. If this permission is granted what effect would that have on navigation on the Canadian side?

Mr. ROCKWOOD. I have brought here one practical boatman and expect to put his testimony before the commission. I think it is stated in the response that is filed here by the town of Fort Frances or the Dominion Government, or both, that down to the present time there has been no appreciable inconvenience to navigation.

Mr. GARDNER. Was this permit that you obtained in the nature of a permanent one?

Mr. ROCKWOOD. It was not, Mr. Chairman. All permits of this kind are revocable at pleasure, and whenever the United States Government thinks that the interests of navigation require that these works shall be taken out it can require us to take them out, and, if we do not take them out, it can put in a few sticks of dynamite and they are gone.

Now, we concede, of course, that we are bound and that the United States Government is bound by the treaty between the two countries made in 1842; in fact, made first in 1783 at the close of the Revolutionary War and repeated in the Ashburton treaty of 1842 and repeated again in this treaty under which this commission is organized, which guarantees freedom of navigation in these boundary waters to the citizens of both countries. We, of course, are subject to that treaty and so is the Government.

Mr. ANDERSON. May I suggest at this stage, Mr. Chairman, that the applicant be required to file the permission obtained from the United States War Department for the location of the construction of the present boom?

Mr. ROCKWOOD. Mr. Chairman, it did not occur to me to bring this application. I will file it. If I have not a copy in my office, I will procure one and file it.

This is the statement which has been filed by the town of Fort Frances. It objects to the granting of piling rights, as set forth in the application of the International Lumber Co. and the plans accompanying the same, on the following grounds:

(1) That the proposed boom would seriously encroach upon the rights of navigation as at present enjoyed by citizens of Canada and the United States. The Rainy River is an important highway, and is the only means of communication of the city of International Falls and the town of Fort Frances with



Rainy Lake and its tributary waters to the north and east. The town of Fort Frances is the business center for a number of sawmills situate on islands and points in Rainy Lake. The Rainy River is used very extensively for the passage of timber, railway ties, and pulp wood, and it is therefore necessary that a wide channel should be maintained in the center of the stream. The corporation suggests that this channel should be at least 400 feet in width extending for 200 feet on each side of the international boundary.

I will call attention, in passing, to the fact that the Shevlin-Clarke boom lies 132 feet distant from the international boundary. If a full 200 feet is necessary on the north side, then that boom is an encroachment and would have to be moved.

The corporation also desires to draw the attention of the Government to the fact that the municipal boundary of the town coincides with the international boundary in the center of the Rainy River opposite the whole of the space proposed to be occupied by the International Lumber Co.'s boom. The corporation has therefore a duty cast upon it to preserve the rights of navigation of the said river at this point as part of its municipal territory, and also the duty of policing and regulating the use and enjoyment of such rights on this portion of the said river.

The corporation further submits that the citizens of Canada have a rights to the free navigation of the whole of the navigable portion of the said river, and that the inclosure of any portion thereof, or the exclusive use or occupation of any considerable part of such an important navigable stream by any person, firm, or corporation for storage or any private purpose is a violation of the public rights that could only be justified by public necessity. No advantage will accrue to Canada or to the town of Fort Frances from the grant of the proposed booming rights, and only the private interests of the applicant will be served.

(2) That the location of the proposed boom for a considerable portion of its length is within about 10 feet of the international boundary, and therefore the navigable channel of the river would be practically all on the Canadian side of the boundary line. The resultant greater proximity of the water traffic to the Canadian shore would greatly increase the wave action caused by motor and other boats and great erosion to the banks would ensue, owing to the high water maintained by the power dam, the more so as these banks are lower than the opposite ones on the Minnesota side.

The corporation submits that, as a fact, the applicants have already without permission occupied the booming ground for the use of which they now seek Government approval, so that traffic at this point has hereby been forced chiefly into Canadian waters, and as a consequence of this and of the high-water level caused by the erection of the dam by the Minnesota & Ontario Power Co., the banks of the river opposite said boom in the said town have already been eroded and destroyed for a width of from 40 to 65 feet. That increased damage would follow the proposed grant is therefore not merely a presumption but has already been demonstrated.

3. That the rights and interests of the citizens of Fort Frances will be seriously prejudiced by encroaching upon the channel of the river as is proposed. It is only fair to assume that industries will be established on the Canadian side of the river opposite the proposed boom, in which case additional wharfage and boomage rights would be required. Great inconvenience would be caused and the industrial development of the town would be hampered by the difficulty in providing such accommodation if the river channel were narrowed as proposed. The fact is that a large boom is already in existence on the Canadian side opposite in part to the proposed booming ground of the applicants, and the occupation by the applicants of the space which they now ask permission to use has caused great congestion in traffic at this point. The boom of the Canadian company is well within the limit herein suggested, and it is manifestly unfair to grant a privilege on one side of the river to such an extent as to make it impossible to grant a similar privilege on the other side unless the citizens on both sides are equally benefited by the first grant.

The corporation does not, however, object to the construction of a boom at a distance of not less than 200 feet southerly from the international boundary.

This is dated Fort Frances, 25th October, 1916; signed "Robert Moore, mayor."

Mr. GLENN. They do not object to how much?

Mr. ROCKWOOD. Two hundred feet. I can say in passing that that 200 feet is the amount of space, or approximately so, that is actually used for the benefit of the Fort Frances Pulp & Paper Co., which is on the Fort Frances side. That is approximate; it is not exact.

Then the Hon. J. B. Hunter, deputy minister of public works of Canada, addressed the commission as follows:

The undersigned, as deputy minister of public works of Canada, respectfully submits the following minute of council as statement in response to this application.

J. B. HUNTER,

*Deputy Minister of Public Works of Canada.*

P. C. 2520.

Certified copy of a report of the committee of the privy council, approved by his excellency the Governor General on the 15th November, 1916:

"The committee of the privy council have had before them a report, dated 6th November, 1916, from the minister of public works, stating as follows:

"That the Government of the United States has referred to the International Joint Commission the application of the International Lumber Co. for approval of the plan of a boom in the Rainy River at International Falls, opposite the town of Fort Frances, Ontario;

"That it is related in the company's application: 'That it is a corporation organized under the laws of the State of Minnesota for the purpose, among other things, of manufacturing lumber, and that it is engaged in the operation of a large sawmill at International Falls, Minn.; that its mill is located on the bank of Rainy River, in the easterly part of section thirty-four (34), town seventy-one (71) north, range twenty-four (24); that the only feasible and practicable method of supplying the mill with logs is by placing them in booms in the river at and above the mill, to wit, along the front of lot one (1), in section thirty-four (34), and the entire front of section thirty-five (35), in said town and range; and that for such purpose it is necessary to maintain booms and sorting gaps in the river for storing, handling, and sorting not only the logs intended for the company's mill but also such other forest products as may become mingled therewith.'"

That is the end of the quotation. The minute proceeds:

"That the company proceeds to state in the application that it has been using booms which were constructed under a permit granted to the Minnesota & Ontario Power Co. but that the booms have become inadequate and require reconstruction, and the company therefore requests the approval of the plan of the booms submitted with the application and authority to construct and reconstruct in accordance with the said plan."

Then that objection of the town of Fort Frances is quoted at length, as I have just read it.

"The minister observes that the district engineer of the department of public works, to whom the matter was referred, has presented a report, a copy of which is attached hereto, which is to the following effect:

"That the boom has already been constructed and is a distinct obstruction in the river and that the plan accompanying the application does not correctly show its location nor its relative position with regard to the international boundary."

I thought I had failed to understand the thing, or that the plan we have filed does not show the location of the present boom.

Mr. ANDERSON. It means the plan accompanying the application does not show the location of the boom as constructed.

Mr. ROCKWOOD. Well, as I understand, it does not purport to show it at all.

"(2) The proper location of the boom is indicated on the plan attached hereto which has been prepared by the district engineer, and the international boundary is marked thereon in accordance with information obtained from the International Boundary Commission.



" (3) The boom crosses the international boundary at three points and runs along it at other points. The boom as built confines for its own use about one-half of the river—that part south of the international boundary—for about 6,800 feet of its length, or one and a quarter miles, opposite the town of Fort Frances.

" (4) The line of deepest water lies within the boom on the Minnesota side for some 2,000 feet. Navigation is not materially affected at the present time, although the distance between the boom and the boom belonging to the Shevlin-Clarke Co. on the Canadian side is but 175 feet at one point and 200 feet at another point."

That is as it is actually constructed.

Mr. MAGRATH. What I would like to get cleared up in my mind is this: Is this application based upon injury to navigation, or is it on the basis of raising the water on the other side of the boundary?

Mr. ROCKWOOD. I do not know the point of view which the Secretary of War adopted in that respect. My inference was that it was such an application that he wished it to be referred to this commission to consider both of these points, acted upon it, and granted it.

Mr. MAGRATH. The Chief of Engineers, in transmitting it to the Secretary of War, I think it was, appeared to raise the question of navigation. Mr. Tawney has the papers there. Then the Secretary of State passed it on to the commission. Now, are you before us because this boom contemplates the raising of the level of the water on the Canadian side, or is it on account of its affecting navigation, or both?

Mr. ROCKWOOD. I have never seen the order of transmittal, and I do not know under just what theory the Secretary of War acted. It was in the hands of the commission before I knew even that he contemplated sending it to the commission: and, further than that, if the question of navigation was in his mind, I do not know whether he thought navigation had been affected, or that it might possibly be affected, and that he wanted this commission to have an opportunity to determine the facts.

Mr. TAWNEY. I have never seen the papers or correspondence passing between the Government and the commission until now. I see, in looking over the correspondence, a communication here from the Secretary of War to the Judge Advocate General, in which he raises this question. It reads as follows:

This application by the International Lumber Co. for approval of plans for booms and sorting gaps on the American side of Rainy River at International Falls, Minn., involves one point which should be called to the Secretary's personal attention:

(2) Rainy River is a boundary stream lying between our country and Canada, the middle of the stream being the boundary line. The booms here proposed on our side extend practically to the middle, and thus close to navigation one-half of the river. While this river, like the others between Canada and the United States, is navigable in common by both countries, still, even with the approval of the International Joint Commission, I should doubt the advisability of shutting off all the navigable portion within our territorial jurisdiction. I should hesitate to approve of this application, because, in our own interests, I should dislike so to exercise a municipal-law power as to relinquish a natural right of our own in reliance upon a conventional one granted by a neighboring nation, but also lest I might thereby presume upon the generosity or subject myself to the criticism of our neighbor.

(3) I recommend that the further views of the Chief of Engineers be solicited upon this particular consideration.

That is signed by Acting Judge Advocate General Bethel. I have always understood until just now that this was an application made

by the International Lumber Co., through our Government, for our approval of this proposed construction upon the theory that its maintenance operated to raise the level of the waters on the other side, which can not be done under Article III of this treaty, but I do not see anything anywhere in the papers, or any claim by anybody, that the construction of this boom will have that effect; and if it has not that effect, then it is a question of jurisdiction. There is a serious jurisdictional question raised here as to whether this boom affects the level at all.

Mr. ANDERSON. While that point may not have been taken by the Dominion Government, I think the effect is that the construction of the boom will do both: it will interfere with navigation and will also have the effect of raising the water on the Canadian side.

Mr. TAWNEY. That is a question of fact, and I do not know whether there is anybody here claiming that; and if that is a fact that it does raise the level, the commission has unquestionably jurisdiction under Article III; but if it is not raised, there is not anything in the treaty which gives jurisdiction on account of interfering with navigation. The only way the two Governments could have that question brought up would be under Article IX of the treaty. But I did not know until just now that the application was before us on the initiative of our Government. You proceeded, as I understand, Mr. Rockwood, in your application for this modification of the present boom, upon the theory that the Government of the United States had exclusive jurisdiction over navigability of waters within its jurisdiction, and that there was not anything involved here that could require the approval of this commission. Was that your theory at the outset?

Mr. ROCKWOOD. I do not believe that I tried to settle that question finally in my own mind. I realize that there are some questions which plainly must come to this commission, others that plainly need not come, and others in a kind of twilight zone where the question is debatable. I looked upon this as one of the debatable questions. I realized that it must come; but, as I said before, if the Secretary of War had acted without referring it to this commission, we should have assumed, I think, that he acted rightly and should have proceeded on that theory, but, instead of that, he referred it.

Mr. TAWNEY. You will recall the case of the Watrous Island Boom Co. in the river below International Falls. I do not now recall from memory that there was anything proposed to be done on the Canadian side which gave the commission jurisdiction, but that it, was contended, and that it did appear, that the construction and maintenance of this boom on the United States side would affect the flow or the level of the waters on this side, and for that reason the commission took jurisdiction, or had jurisdiction, in that case and proceeded to a settlement of it. Both those conditions must exist under Article III. It must be an obstruction which affects the flow or the level on either side of the water to give this commission jurisdiction.

Mr. MAGRATH. Perhaps you do not know about this correspondence.

Mr. ROCKWOOD. No; I have never seen it.

Mr. MAGRATH. The Chief of Engineers on July 31, addressing the Secretary of War, says:

The booms in places will extend to within 10 feet of the limit of the American waters, and the effect upon navigation will be to confine the use of the river, in the vicinity, to the waters on the Canadian side of the boundary, where there



is ample room for such navigation as now exists, or is likely to develop in the future.

And so on.

Then the Second Assistant of the Secretary transmits that letter to the commission in the following language:

I have the honor to transmit herewith for your consideration the inclosed copies of the application of the International Lumber Co. for the approval of plans for booms in Rainy River, together with the accompanying drawings relating thereto, and the correspondence on the subject from the War Department.

The question in my mind is, Did your Government submit it to this commission on account of the navigable features? Because there is no reference to your boom in any way affecting the level on the Canadian side.

Mr. Rockwood. As I said, I cannot answer that question any further than I have. In the objection that is filed here, it is stated that when this boom packs with logs, as a boom may do once in a while, and as this boom did, in one instance, at any rate, the effect of the boom, then, while that pulling or dragging of the logs lasts, is to confine partially the flow of the river to the northern half, and it is suggested that the erosion is increased. Now, that is a possible effect. My impression is that there has been no appreciable effect in that particular, but it will perhaps be argued that the flow on the Canadian side is increased in that way, when the piling or packing of the logs within the boom occurs. It did occur in the high water of last spring, and lasted a short time, because the current was so strong in that unequal flood, it carried one log under another, until they were packed for a little distance almost solid to the ground.

Then the next paragraph reads:

(4) The line of deepest water lies between the boom on the Minnesota side for some 2,000 feet. Navigation is not materially affected at the present time, although the distance between the boom and the boom belonging to the Shevlin-Clarke Co. on the Canadian side is but 175 feet at one point and 200 at another point.

(5) Between the upper end of the boom and the Minnesota shore the river has been filled with logs from the bottom to above the surface for storage purposes during different times, it being the custom to bring the logs by rail to this point and discharge them into the river down which they gradually find their way to the International Lumber Co.'s mill below. The blockage, if it may be so called, has covered an area 2,000 feet long by 500 feet wide and reduced the area of flow section by about 45 per cent. Any effect this may have on the surface profile or on currents and their action north of the boundary has not been observed, but it may be stated that with a high-water condition and the south half of the river dammed opposite the Shevlin-Clarke Co.'s mills, the Canadian shore below must suffer from undue scour.

The minister further states that the chief engineer of the department of public works has recommended that the company's application be not approved.

The minister, under the circumstances, recommends that a statement in response on behalf of the Government of Canada be filed with the International Joint Commission, opposing on the grounds already cited, the application of the International Lumber Co. for booming rights in the Rainy River at International Falls, Minn., opposite the town of Fort Frances, Ontario, as set forth in the said application and on the plan accompanying the same.

The committee concur in the foregoing recommendation and submit the same for approval.

Then follows the report of the district engineer, Mr. S. J. Chap-  
leau:

DEPARTMENT OF PUBLIC WORKS, CANADA,  
Ottawa, October 27, 1916.

E. D. LAFLEUR, Esq.,

Chief Engineer D. P. W., Ottawa, Ontario.

DEAR SIR: In reply to your letter of instructions of September 29, last, with regard to application of the International Lumber Co. for approval of plans for a boom in the Rainy River at International Falls, I beg to submit the following report with plan:

The accompanying plan is the result of surveys made by the department in 1914 and shows the location of the boom in question and the location of the international boundary as obtained from the International Boundary Commission.

The boom has already been constructed and prior to any application for approval made to this department of which this office has any knowledge.

From the plan it will be seen that the boom crosses the international boundary at three places and runs along it at others. The line of deepest water lies within the boom on the Minnesota side for some 2,000 feet.

Navigation is not materially affected at the present time, although the distance between the boom in question and the boom of the Shevlin-Clarke Co. on the Canadian side is but 175 feet apart at one point and 200 feet apart for some distance at another.

Between the upper end of the boom and the Minnesota shore the river has been filled with logs from bottom to above surface for storage purposes during different times, it being the custom to rail the logs to this point and discharge them into the river, down which they gradually find their way to the International Lumber Co.'s mill below.

The blockage, if it may be so called, has covered an area of 2,000 feet long by 500 feet wide and reduced the area of flow section by about 45 per cent.

Any effect this may have on the surface profile or on currents and their action north of the boundary have not been observed, but it may be stated that, with a high-water condition and the south half of the river dammed opposite the Shevlin-Clarke Co.'s mills, the Canadian shore must suffer from undue scour.

MR. MAGRATH. What are you reading from?

MR. ROCKWOOD. That is the report of the engineer, and it is considerably the same matter incorporated in the minute of council, which I have read.

MR. ANDERSON. It is the same up to that point.

MR. ROCKWOOD. In substance it is the same. It continues:

The boom as built confined for its own use about one-half of the river—that part south of the international boundary—for about 6,800 feet of its length, or  $1\frac{1}{4}$  miles, opposite the town of Fort Frances, Ontario.

The boom is constructed of pile clusters with the boom timbers strung between, and should be considered as a permanent structure.

That the boom, or parts of it, was constructed before approval of plans by order in council and also that its position and operation forms a distinct obstruction in the river appears to be in direct contravention to chapter 115, R. S. C.

The blue print accompanying the application, being the one sent to the secretary of the department by the secretary of the International Joint Commission under date of September 26 last, is not correct with regard to the position of the boom as it exists, nor in its relative position with regard to the international boundary.

We have stated in our application that the boom as it exists is not identical with that shown on the plans we filed. Here it is stated that it is not correct with regard to the position as the boom exists, nor in relative position with regard to the international boundary. That suggests, if it does not assert, that Maj. Peek's understanding of the line fixed by the war department is different from that fixed by the department of public works. As I said, I did not discover any difference between them, but it may be that a careful examination



would disclose a difference. The two maps are on a different scale, but I think in that respect they agree.

Mr. ANDERSON. I think perhaps you misunderstand what is meant in that. I think, in the first place, perhaps your plans as filed are not as definite as they might be in indicating the exact location of the boom. It is very difficult to tell from your plan whether that is intended for a new boom, or for the boom as it exists. All that Mr. Chapleau intends to suggest here, I think, is that the position of the boom, as constructed, forms a distinct obstruction to navigation, and that it is not correct, bearing in mind the boom already there. I do not think Mr. Chapleau intends to suggest that the marking of the international boundary line on yours is not correct at all.

Mr. ROCKWOOD. Then I misunderstood him, and I think Mr. Chapleau has failed to notice, possibly, that our application expressly refers to this map, and asks for approval with reference to this map, not with reference to what exists, but with reference to this map.

Mr. ANDERSON. The difficulty, as I say, is that this does not show, except a line there, any details of your boom. It does not say whether what is intended there is intended to be any particular part of the boom at all, or the extreme outside line of the boom.

Mr. ROCKWOOD. I might say the extreme outside line of the boom. There is only one way you can construct a boom: that is to drive piles and connect those piles with boom sticks, and I think that definition goes without saying in an application of this kind. I thought everybody understood it. Perhaps I should have specified more fully the method of construction.

Mr. MURRAY. Do I understand it is proposed to reconstruct?

Mr. ROCKWOOD. Put it in where necessary, and confine it—

Mr. MAGRATH. I do not think the plans showing the boundary where it has recently been located, have been made public yet, and I think the two surveys would show discrepancies. I think the United States engineers say that your boom comes within 10 feet of the boundary. The Canadian public works department says it crosses in two or three places. I think that can be easily understood by reason of the fact that plans showing the boundary as recently located have not been made public.

Mr. ANDERSON. The explanation is that Mr. Chapleau was referring to the boom as already constructed, and the engineer of the War Department was referring to the application as shown upon this new plan.

Mr. MAGRATH. I understand it now.

Mr. ROCKWOOD. That was my idea. Now, I file this statement in reply:

The applicant, the International Lumber Co., respectfully states in reply the following facts: On January 9, 1915, a contract was entered into between the Government of Ontario and Edward Wellington Backus and his associates, called the purchasers, for the construction of a dam and development at Fort Frances. By the terms of this contract it was provided that 4,000 horsepower should be continually available on the Canadian side, and that the land occupied by the dam and immediately adjacent thereto, in Fort Frances, should be conveyed to the purchasers.

It was also provided that the following parcel of land should be conveyed to the purchasers:

Then follows Schedule A. This map will show precisely what it was:

Mr. MAGRATH. Are you bringing this out for my benefit, on account of what I said this morning?

Mr. ROCKWOOD. Yes.

Mr. MAGRATH. I understand this plan has been amended and I do not think it is necessary to take up time.

Mr. ROCKWOOD. It has been amended, but at the same time it was reserved to be used in connection with this same water power.

Mr. MAGRATH. It occurred to me it would be better to have something in the nature of the plan the Shevlin-Clarke Co. put in. This shows their interests in the river, and I thought it would be desirable to have something of the same kind from you.

Mr. ROCKWOOD. We can comply with that, and we can color this map. My point is that Canadian law recognizes, and to this minute recognizes, the necessity of facilities in connection with this power other than the point of the industry itself, and, as a matter of law, that land on that shore is reserved for use in connection with these facilities. That may not have any strictly legal effect. But it does have the effect of showing that it has been recognized and is recognized now that the facilities at the site of the dam and at the works themselves are inadequate for the operation of these works.

Mr. ANDERSON. Have you applied to the Ontario government for any portion of that land?

Mr. ROCKWOOD. Perhaps Mr. George and Mr. Backus can state this better than I can, but there have been negotiations, and there are negotiations pending now with the government at Toronto, for building the dike that has been talked about so much for protecting the bank against erosion, and for bringing down from the Shevlin-Clarke mill the refuse, putting in a railroad track and bringing down the refuse of that mill and saving it for mill purposes at the paper mill. These negotiations are pending now, and we are struggling and have been struggling to come to an agreement on these different features and get a working plan that will put an end to the little questions of difference and friction, and while those points have not been put into legal form they are being considered, and we are simply doing the best we can there and here to find a living working condition.

I will not read the technical description of that tract of land, Schedule A. It is printed here:

These lands in Schedule A were intended to provide facilities for manufacturing and industrial purposes in connection with the water-power development. The contract was, in accordance with its own terms, shortly afterwards assigned to the Ontario & Minnesota Power Co. (Ltd.), an Ontario corporation, organized for the purpose of taking over the contract and developing the power.

And, of course, the commission knows the power was developed.

Thereafter, at the instance of the town of Fort Frances, the contract was amended by statute, and the river frontage above the dam was eliminated from the land to be conveyed.

I think I am right in saying that the town of Fort Frances made that request out of fear that this land would be held out of use; that it might lie idle and be the means of preventing the development, rather than promoting development of industries in connection with the power. At any rate this statute was passed at the instance of



Fort Frances, chapter 132 of 1906, Statutes of Ontario, and section 5, reads as follows:

The lands described in Schedule A hereto shall remain vested in the Crown, to be dealt with in connection with the development of the said water power, and the establishment or operation of such industries at the town of Fort Frances, requiring the use of power as would be for the public benefit in such manner as the Lieutenant Governor in Council may from time to time direct, absolutely freed from the provisions of the said agreement and from any claims or demands whatsoever on the part of the Ontario & Minnesota Power Co. (Ltd.).

By section 1 of the same act it is provided that a full half of the power shall be always available on the Canadian side.

It was first seen that it was very difficult to use half on the Canadian side, among other things because the land had gone into private hands and could not be got together to make a common convenient site for industries.

Mr. MAGRATH. Is that the existing arrangement now you are reading from?

Mr. ROCKWOOD. It is.

Mr. MAGRATH. One-half of the power shall be available for use on the Canadian side?

Mr. ROCKWOOD. Yes.

Mr. MAGRATH. That is what exists to-day?

Mr. ROCKWOOD. Yes; but as a matter of fact some of the power is converted into electricity and sent across and used on the other side, but that is under an irrevocable permit, as I understand. This statement continues:

This act left the company under the obligation of developing the full power and reserving one-half for use on the Canadian side, but left it no land on which to operate, excepting the inadequate mill site at the dam.

In 1912 to 1914 the proprietors of the Ontario & Minnesota Power Co. (Ltd.), under pressure from the town of Fort Frances, organized the Fort Frances Pulp & Paper Co. (Ltd.), and the latter company erected a large paper-making plant on the Fort Frances side, having a capacity of approximately 130 tons of finished paper per day.

The contract under which that will be done has been offered by Mr. Murray, and we will be glad to have it.

As part of this plant it was necessary to install pulp grinders and a wood-working plant on the Fort Frances side, and this was done. The only railroad on the Fort Frances side, the Canadian Northern Railway Co., has refused to connect its rails with this plant, and the only means of supplying it with pulp wood is by the river. There is no frontage procurable for this purpose other than this reserved tract.

The only possible means of supplying the Fort Frances Pulp & Paper Co. (Ltd.) with pulp is by utilizing the facilities of the applicant—the International Lumber Co.—on the Minnesota side. Without such storage the Fort Frances Pulp & Paper Co. (Ltd.) would be unable to operate its mills.

The boom of the International Lumber Co., for which approval is now asked, is to supply space for the raw material designed for—

(a) The International Lumber Co., operating a sawmill at International Falls.

(b) Minnesota & Ontario Power Co., operating a pulp and paper mill at International Falls.

(c) Fort Frances Pulp & Paper Co. (Ltd.), operating a pulp and paper plant at Fort Frances.

The percentage of capacity required for the three industries is approximately as follows: International Lumber Co., 50 per cent; Minnesota & Ontario Power Co., 25 per cent; Fort Frances Pulp & Paper Co. (Ltd.), 25 per cent.

I think I should call attention to one thing in that connection. The Minnesota & Ontario paper mill on the Minnesota side is larger than the other, one having a capacity of 130 tons per day and the other 220 tons of paper per day. But the Minnesota & Ontario Power Co. has some space in the river which it has been using and is now using near its own mills which it is not possible to use for the other side because the material can not be taken directly across the current, and this percentage of use refers rather to the upper portion of the boom, 25 per cent of it being for the needs of the Fort Frances Pulp & Paper Co.

Mr. Backus will give further explanations.

Mr. MAGRATH. You say the railway company has refused, but Mr. Backus says that, even if the railway company were willing, it would be no service—

Mr. ROCKWOOD. That is true; unless a boom was placed opposite here. I had an impression a boom might be put in there of some reasonable capacity, but I may be mistaken about that. Mr. Backus will make that clear.

This statement continues:

If storage facilities could be furnished on the Fort Frances side for the Fort Frances Pulp & Paper Co. (Ltd.), it would be entirely feasible to place the boom of the International Lumber Co. at a distance of at least 100 feet south of the international boundary, as that boundary is shown on the map prepared by the Dominion Government and filed in this proceeding, without greater crowding of the facilities.

That is, without crowding the facilities more than they are crowded now. They are very inadequate at best, but putting the Fort Frances pulp wood on the Fort Frances side would permit the dam to be dammed by us, say 100 feet, without greater congestion than exists at the present time.

The boom already constructed by the applicant, as well as that contemplated by its petition herein, consists entirely of pile clusters connected by floating boom sticks, and can be quickly and easily removed at any time, if changing conditions shall so require.

Mr. MAGRATH. When was that boom put in?

Mr. TAWNEY. 1911 the permit was given,

Mr. ROCKWOOD. 1911.

Mr. MAGRATH. And the paper mill?

Mr. ROCKWOOD. The paper mill began operation in 1910.

Mr. MAGRATH. On the Canadian side?

Mr. ROCKWOOD. No; on the Minnesota side; on the Canadian side about 1914.

Mr. MAGRATH. And you require about 25 per cent of capacity for the Canadian mill?

Mr. ROCKWOOD. Yes; in this upper portion of the boom. In other words, if each side could supply its own facilities for handling the materials necessary for operating the industries on the respective sides, there would be no difficulty in reserving space for a boat passage along either side of the boundary. Perhaps not 200 feet on each side; 200 feet is more than seems to be practical, more than is required. The statement says—

and can be quickly and easily removed at any time, if changing conditions shall so require. In the ordinary operation of the boom only the surface of the water is occupied by logs, and in rare instances only is there a sufficient



force of current to carry logs under the floating mass and make an appreciable obstruction of the current.

I will call attention of the commissioners right here to the fact that the old boom of the Rainy Lake & River Boom Corporation, which is down below the Long Sault, has stood on the American side, and occupied substantially the whole of the American half of the river since about 1889, almost 30 years. I have never heard any suggestion whatever of any encroachment that could be perceived on the Canadian bank, and I have never heard of any difficulty of navigation, because the boats there for a short distance go to the north half of the river. It seems to me that that question is technical. If the United States finds it necessary to confine navigation to its own side, it can, as I say, take this boom out, or any other boom that will be constructed, and it can not waive that right. Under our law the United States Congress itself can not waive that right, can not convey to any individual a vested or indefeasible right to occupy the bed of any navigable waters. That has been settled by the decisions of our Federal Supreme Court in two or three cases: in other words, the most that any Government can give, under our rules of law, is a revocable permit.

Mr. MAGRATH. Are these permits from year to year or for a number of years?

Mr. ROCKWOOD. They are in terms at the pleasure of the Secretary of War. I think the language is that they may be canceled at any time: they are at will—something equivalent to that.

Mr. MAGRATH. And you have no recourse whatever?

Mr. ROCKWOOD. No recourse whatever. The commission will perhaps remember the controversy that has existed in the St. Lawrence River between the Long Sault Development Co. and the State of New York, that company claiming it had vested rights in the bed of the waters of the St. Lawrence River. The State of New York passed an act repealing an act previously passed, and the Supreme Court of the United States within a few days has settled that controversy in favor of the State, and held that the grant, in terms unqualified—

Mr. TAWNEY. In favor of the State?

Mr. ROCKWOOD. Yes.

Mr. TAWNEY. Held that the State did have the right?

Mr. ROCKWOOD. Yes. Am I wrong about that? They held that the State had the right to repeal.

Mr. TAWNEY. Oh, yes; it is about three months ago, instead of three days.

Mr. ROCKWOOD. Yes; perhaps it was; it just came to us recently.

Mr. TAWNEY. It was week before last I read it, and that decision came, following a decision 30 years ago as to the lake front in the State of Illinois, repealing an act granting the Illinois Central Railway Co. a great tract of land under the water in the margin of the lake. The State, after a lapse of, I think, 30 or 40 years, repealed the grant, and was sustained in its right by all the courts, including the Federal courts. That applies with greater force to a permit that may be issued by an executive officer for a structure of this character. It is purely temporary.

Mr. GLENN. All of that is set out in the letter transmitting this matter to us, stating these things fully, stating that, so far as the

United States Government is concerned, they are willing, but that Canada must be heard because we have no right to this water, but that is not binding on this commission.

Mr. ROCKWOOD. Yes; for that reason we are not objecting to the hearing. We want to find a working plan.

Mr. GLENN. It seems to me we have to listen seriously and see what Canada wants.

Mr. TAWNEY. So far as you are concerned I do not see that you are in court at all, except in reply to what the Dominion Government and the town of Fort Frances has said. It is the United States Government who is the applicant.

Mr. ROCKWOOD. The Government made the reference.

Mr. TAWNEY. Yes; and the Government does not state what they want us to do.

Mr. GLENN. It says it is not binding on us, but it says, so far as they are concerned, they see no objection to it, but leave it to us.

Mr. ROCKWOOD. I suggest this from recollection: At the very first meeting of this commission in Washington in 1912 the question was raised whether the Secretary of War should act first and send his report to the commission for approval, or whether he should send an application to the commission and let it act first. Action has been taken in this case by the Secretary of War, and the commission seems to have acquiesced in it by fixing the hearing before it.

Mr. TAWNEY. The acquiescence of the Government of the United States is due to the action of the commission, that where an authority is given for an obstruction in the boundary waters the plan for that obstruction must be first approved by the Secretary before the commission will act, or can act intelligently, because the nature of the obstruction would not be fully known until the specific plans under which it should be constructed were known, and that could not be known until the Secretary of War had confirmed or approved of the proposed plan, but here there is, so far as I can see from the correspondence, nobody claiming any obstruction here that will affect the flow or level on the Canadian side.

Mr. ROCKWOOD. That seems to be true.

Mr. TAWNEY. That is, so far as the application is concerned. I do not know on what authority the War Department sent this application here. I can not find out from the correspondence accompanying it. I have never seen it.

Mr. GLENN. It looks as though it were on account of navigation, judging from the way it reads.

Mr. TAWNEY. We have nothing to do with navigation, unless there is an obstruction, raising the level, or interfering with the flow of water.

Mr. ROCKWOOD. Then proceeding:

The applicant is informed and believes that the damage, if any, done on the Fort Frances shore by erosion or otherwise is very slight, and in comparison with the importance of the industry of the Fort Frances Pulp & Paper Co. to the people of Fort Frances and to the people of the adjoining district of Ontario, this damage is negligible.

The applicant further represents that it is informed and believes that neither has the boom heretofore constructed caused any appreciable inconvenience to navigation, nor will the proposed boom cause any such appreciable inconvenience.



Now, as to the statement filed by the United States; Mr. Wyvell has not arrived yet, but the statement is as follows:

The foregoing application is submitted to the International Joint Commission with the suggestion that the present and future needs of navigation in the Rainy River be carefully safeguarded in any decision which may be made herein. In this connection it is pointed out that the effect of the construction of the boom according to the plans submitted will be to confine the navigation along the boom entirely or almost entirely to the Canadian side of the international water, and it is further suggested that the rights of the free use of the waters on the part of the citizens of both countries for navigation purposes be carefully preserved.

Then the statement filed by Mr. Clapp on behalf of the Shevlin-Clarke Co. is as follows:

Shevlin-Clarke Co. (Ltd.) has a large sawmill plant located in the east end of the town of Fort Frances. In connection with the plant it maintains in the Rainy River, entirely on the Canadian side, booms for the holding or storage of logs. These booms are maintained under authority of a license from the minister of lands, forests, and mines of the Province of Ontario. The limits within which such booms may be (and are) maintained are defined in the written license by reference to a plat attached thereto..

For the information of the commission we have had the plat filed in this proceeding, showing the proposed booms of the applicant, and the plat attached to the license of this company, reduced to the same scale and consolidated, in order that the commission may see graphically the relative position of the booming ground and booms of this company to the proposed boom of the applicant. The consolidated plat will be filed with the commission. From this plat it would appear that the booming ground of this company at no place approached the line shown as "international boundary line (approximate)" nearer than about 2 chains (132 feet); and shows that the proposed boom of the applicant opposite said booming ground is apparently at no point less than about 230 feet distant from said booming ground.

This company does not believe that it will sustain special damage by the granting of this application and would be damaged at all, only if and as the general public, and particularly the town of Fort Frances, might be damaged.

As the United States of America and the Dominion of Canada, representing the general public, and the town of Fort Frances, representing that community, have become parties to this proceeding, this company submits that if, in the decision on this application the rights of those so represented are protected, its own interests will not suffer.

Respectfully submitted.

CLAPP & MCCARTNEY,  
*Attorneys for Shevlin-Clarke Co. (Ltd.).*

If those figures are right, it would leave 132 feet on the north and 98 feet on the south side as an open steamboat channel at the closest point.

Mr. TAWNEY. I would suggest that in view of the fact that this application has been submitted by the Government of the United States without any definite statement as to the purpose of its submission or the nature of the order desired, we should postpone further proceedings until counsel for the United States is present. He may possibly be able to explain why this application comes to us in this unusual way without any statement of facts to show whether it is referred under Article III, IV, or IX and without complying with another rule of the commission with respect to all applications being submitted in printed form.

Speaking for myself, I am unable to find anything in this correspondence to indicate what sort of an order the commission is expected to make, or whether or not it is intended to approve plans or approve a proposed obstruction in this boundary river; nor is there anything to indicate what the effect of the maintenance of this boom will have upon either the level or the flow of the waters on the

other side of the boundary. These facts are jurisdictional and should appear. Counsel for the United States is on his way, but has been detained on account of the unprecedented storm. In view of this situation I think we ought to defer further action until his arrival.

Mr. GLENN. In the letter from the Chief of Engineers to the Secretary of War I find the following:

Under the existing treaties between the United States and Great Britain all navigable boundary waters are free and open for the purpose of commerce to the inhabitants and to the vessels and boats of both countries equally. Along these waters Canadian and American vessels navigate without reference to the international boundary line, each having a common and equal right to the channels and connecting canals. In some places the bulk of transportation is through Canadian territory, at others through American territory. At Sault Ste. Marie the United States operate three large locks and canals, while Canada operates one canal, but these are used by both countries on equal and conditions.

In the region where these booms are located the lumber business is the principal industry, and the assembling and sorting of forest products is essential to success. In 1911 a permit was given the Minnesota & Ontario Power Co. to construct their booms at this locality, but owing to increase of business these have become inadequate and the present application is for the enjoyment and extension of existing booms.

The Chief of Engineers fully considered the effect of the booms on navigation, including the fact that the structures would extend for a portion of their length within 10 feet of their boundary line, and as ample space remained for present and future navigation, in the use of which the people of both countries have free and common use, he can see no objection to the location so far as the interests of the United States are concerned. This feature of the matter was clearly set forth in paragraph 4 of his letter submitting this case to the Secretary of War. The proximity of the booms to the boundary line makes it proper to refer the case to the International Joint Commission. Any objection on the part of Canada will be given consideration by that commission, but no such objection is anticipated, as the project is one in which the citizens of both countries are mutually beneficially concerned.

Under the rules of the commission an application of this kind will not be considered unless it has been approved in advance by the proper department of the Government to which it pertained, and this makes it necessary for the War Department to act first. Approval by the War Department does not conclude the commission, and the authorization recommended by the Chief of Engineers will not be effective until investigation and concurrence by the commission.

It is evident that should the use of the waters on the Canadian side of the boundary be denied to vessels or other means of navigation belonging to citizens of the United States the prompt removal of the temporary structure herein proposed will easily afford the requisite remedy. No other objection to the grant of the desired permit seems to exist, and as the case seems to involve no difficulty as to law or procedure, the recommendation of the fifth paragraph of my letter of July 31 is now renewed. In view of the delay that has occurred, it seems desirable that action be expedited.

WILLIAM BLACK,

*Chief of Engineers, United States Army.*

Mr. TAWNEY. That is approved by the Secretary of War?

Mr. GLENN. Yes.

Mr. TAWNEY. The only ground stated there for submitting this matter to us is the "proximity of this structure to the boundary." There is nothing in the treaty which authorizes the transmission of an application to this commission of any structure in boundary waters merely because of its proximity to the boundary line.

Mr. GLENN. It affects navigation. It affects the amount of water on our side, and the lumber company comes here and denies that. Then the burden is thrown upon the Canadian Government to show they come within this exception.



Mr. TAWNEY. The only reason appearing in this correspondence for submitting this application is the proximity of the boom to the boundary line, and no reference whatever is made as to the effect it may have upon the level or flow of the water on the other side. Proximity to the boundary line is not sufficient to give this commission jurisdiction; it is the effect upon the level or flow of the water on the other side that gives us jurisdiction under the treaty.

Mr. GLENN. Then I think it shows clearly what it is. It speaks of the effect on navigation.

Mr. TAWNEY. We have nothing to do with the effect upon navigation.

Mr. GLENN. But we have to do with the free use of the water. Canada is as much entitled to the free use of the water as we are, and Canada says, "We are interfered with and do not get the same amount of water." And it appears to me it is up to them to show they do not get the same amount of water.

Mr. MURRAY. I do not know whether you have considered the Canadian treaty which refers to the use and obstruction of the water.

Mr. TAWNEY. I refer to Article III, which says:

It is agreed that, in addition to the uses, obstructions, and diversions heretofore permitted or hereafter provided for by special agreement between the parties hereto, no further or other uses or obstructions or diversions, whether temporary or permanent, of boundary waters on either side of the line, affecting the natural level or flow of boundary waters on the other side of the line, shall be made except by authority of the United States or the Dominion of Canada within their respective jurisdictions and with the approval, as hereinafter provided, of a joint commission, to be known as the International Joint Commission.

Mr. MURRAY. But you must construe that in view of Article VIII, which speaks of the use of the water.

Mr. TAWNEY. But it is only obstructions which affect the level or flow of boundary waters that this commission has authority to deal with under the treaty. The reason I suggested that further consideration be postponed is that I do not think we should proceed in the absence of the Government's legal representative.

Mr. ANDERSON. I have no objection to that; but I was going to suggest placing myself on record, so that there would be no question about the commission having jurisdiction, because I think it is highly desirable the commission should have jurisdiction over the matter and deal with the application on its merits.

Mr. TAWNEY. We proceeded upon the theory that the lumber company was the applicant. Now it appears that the Government of the United States is the applicant, and we can not very well proceed in the absence of the applicant or its counsel.

Mr. MAGRATH. Would you contend, Mr. Anderson, that this question is properly before us?

Mr. ANDERSON. Perhaps the Dominion Government has not raised the question directly of whether or not the uses of the water on the Canadian side are in question or not, but if they are not I would now ask to have it placed upon the record that the effect of the construction of this boom would be to affect the river, or flow of the water, upon the Canadian side of the river.

Mr. GLENN. Read the language of your reply.

Mr. ANDERSON. That is not the language of our reply, but I am proposing now to place on the record this statement, so that there will be no question of jurisdiction, that the result of giving consent

or approval to the construction of the boom would be to affect the level or flow of the water upon the Canadian side. It is indirectly raised in the reply of Canada.

Mr. TAWNEY. In view of the fact that the Government of the United States is the applicant, I repeat that counsel for the Government should first be heard so that we may more clearly understand the purpose for which this correspondence has been submitted and whether or not the facts with respect to the effect of this obstruction are such as to give the commission jurisdiction. Then you, Mr. Anderson, could proceed with your statement.

Mr. ANDERSON. Perhaps I should defer making my statement until Mr. Wyvell arrives.

Mr. MAGRATH. I think you should proceed. This application has been before us and presented through the proper channels.

Mr. TAWNEY. But it comes before us on the initiative of the Government of the United States. I do not think we are justified in proceeding with the application in view of the communication which the secretary of the commission received to the effect that Mr. Wyvell has been detained on account of the unusual storm.

Mr. MAGRATH. Supposing Mr. Wyvell says that the application is not properly before us, what will we do?

Mr. GLENN. Would you be in favor of dismissing it if Mr. Wyvell came and said it was not properly before us?

Mr. TAWNEY. I will decide that question when Mr. Wyvell makes a motion of that kind.

Mr. MAGRATH. We have to consider the public interest. We were to hear this case this morning. We adjourned until 2 o'clock to permit these people to be here.

Mr. TAWNEY. It has been held up because two members of the commission have not been able to reach Minneapolis.

Mr. MAGRATH. I am in favor of proceeding.

Mr. GLENN. The United States have filed a statement as follows:

The foregoing application is submitted to the International Joint Commission with the suggestion that the present and future needs of navigation in the Rainy River be carefully safeguarded in any decision which may be made herein. In this connection it is pointed out that the effect of the construction of the boom according to the plan submitted will be to confine the navigation along the boom entirely or almost entirely to the Canadian side of the international waters, and it is further suggested that the rights to the free use of the waters on the part of citizens of both countries for navigation purposes be carefully preserved.

Mr. TAWNEY. That is a matter that is not within our jurisdiction under this treaty.

Mr. MAGRATH. If we proceed with the hearing and are influenced by Mr. Wyvell in his argument that we should throw this case out, there is no harm occasioned by our going ahead with the work now and getting as far as we can.

Mr. TAWNEY. Usually I do not care about either trying or hearing a lawsuit backward. I would prefer to have the applicant make out his case and proceed in a logical way. It was for that reason that I made my suggestion.

Mr. MAGRATH. Then, why did we hear Mr. Rockwood?

Mr. TAWNEY. Up to this time I understood that the application was on behalf of the International Lumber Co. and not on behalf of



the United States. I had not seen the correspondence until this morning and had not had an opportunity to read the application.

Mr. GLENN. Canada has free use of these waters as well as the United States.

Mr. TAWNEY. That is guaranteed to them by the treaty.

Mr. GLENN. But that makes it a matter before us.

Mr. ANDERSON. If the obstruction interferes with that use, Mr. Tawney, would not that give the commission jurisdiction? If it is alleged that the construction of the boom would interfere with navigation, would not that give the commission jurisdiction?

Mr. TAWNEY. Under article 3?

Mr. ANDERSON. Well, reading articles 3 and 8 together.

Mr. TAWNEY. If this were a question of the right of use rather than the right to obstruct, then the suggestion that you make might have the bearing you suggest, but I have not looked into that phase of it. Article 8 relates exclusively to use and not to obstruction. I do not know under what article this application comes to us. There is not a thing in the correspondence or the case on the side of the applicant to indicate under what article it comes here.

Mr. GLENN. Take articles 3 and 8 and if neither covers it you come down to article 9.

Mr. TAWNEY. This has not been referred to us under article 9.

Mr. GLENN. That refers to any interest, no matter what it is.

Mr. TAWNEY. But it must be referred under article 9 to give us jurisdiction under that article.

Mr. MAGRATH. I believe I am responsible for raising this whole question. I could not see how this application got before us, but I am not worrying very much about court rules, gentlemen. This case is before us and I do not want to waste any time. If when Mr. Wyvell comes here he puts up an argument to justify me in throwing it out, out it will go; but meanwhile I have some time to spare to hear evidence.

Mr. GLENN. I am in favor of going on.

Mr. GARDNER. There is nothing that I can find in the correspondence that relates to anything but navigation. One of the engineers objects even to consideration of that.

Mr. GLENN. I can not see why navigation is not a use as much as anything else.

Mr. GARDNER. It is a use, but the question is whether this commission has jurisdiction over navigation.

Mr. GLENN. We have a right to pass upon the question of whether this country is getting a proper use of the water, and it is referred to us to see whether Canada would get a proper use of the water if this boom were put in there.

Mr. GARDNER. I do not understand that we have any jurisdiction over navigation.

Mr. GLENN. We have to that extent.

Mr. GARDNER. If nothing else but navigation is affected, I question whether this commission has jurisdiction. It seems to be the consensus of opinion of the commission that we proceed to hear the evidence, so we will go ahead on that line. Now, Mr. Rockwood, have you anything further that you want to say?

Mr. Rockwood. I will at this time call Mr. Backus.

**TESTIMONY OF EDWARD W. BACKUS, PRESIDENT OF THE INTERNATIONAL LUMBER CO.**

EDWARD W. BACKUS, president of the International Lumber Co., after being first duly sworn, testified as follows:

Mr. BACKUS. Mr. Chairman and gentlemen, I can say what I have to say very briefly, I think. I do not know that the commission understands the situation fully. If not, I can state it very briefly. This booming work was built several years ago and was operated in about the same manner that it is being operated to-day until some two years ago, when at one point in the river the forest products pushed two or three of the clusters of piling out and, instead of putting them back precisely where they were before, we worked out a little plan so that at that point we could get out the pulp wood to go to the Canadian mill, and when those clusters were put back they were put out a little farther into the river, which would permit of hanging a bag boom there so that instead of putting the pulp wood for the Canadian mill through the sawmill gap and taking it clear down to the ferry crossing we could get the pulp wood for Fort Frances out at this point.

Everything went along without any inconvenience to anyone, so far as I know, until one of our good friends in International Falls thought there was a chance to cause us a little trouble and he began visiting the War Department and reporting that some of the pilings had been changed. As a result Maj. Peek asked one of his men to go up and examine the situation. He discovered that this cluster of piling had been placed out into the river a little farther than the original boom. Then he requested us to make a complete survey. Prior to that time the survey had been a crude affair, simply by taking a line and getting at it approximately. So we put our engineers on and made a complete survey. That survey shows at this point the boom was out farther than it was on the original plan, and I think at one other point, making two in all. So that the little contention was practically nothing.

Then Maj. Peek, after laying the survey of the old plan, drew out a new plan himself and called me to his office one day and said, "In two places your boom now does not conform to the plan as approved by the War Department, and I think it would be well for you to ask for the approval of this plan, and I will recommend the granting of it in so far as the waters are within the United States. In so far as the waters are outside of the United States the War Department will have no jurisdiction. Then, if you like, you can take this plan to the proper Canadian department and if they are not willing to approve it as it stands you will have to move your piling so that the piles will all be within the United States." That we did, and I never heard of it again until I got notice of this meeting.

I had not any idea that all this muss was going to be kicked up over that little affair, because in the meantime there has not been any interference with navigation. You gentlemen have all been there; you have been up and down that river. This cluster pier, as we term it, is a little outside of the line, but it does not particularly interfere with navigation. If the Canadian Government should say,



"That pier should be taken out and you must make some other arrangement," we would be glad to do so.

However, we are not coming before you to ask for an entirely new boom. Granting that the old permit that we have from the War Department stands and you should say that those piers are out beyond the boundary line—if you can determine where the boundary line is—and that they must be moved, of course, we will move them. But the fact is that our space is not a quarter large enough as it is, and we have for several years past been asking for booming privileges on the Canadian shore from the Shevlin-Clarke mill down to the pulp mill, and so far have not been successful. The Shevlin-Clarke people with the same machinery that we have in our sawmill have at least three times as much room as we have, and they have none too much at that. On the other hand, we have the sawmill, the big paper mill at International Falls, and the big paper mill at Fort Frances, and the fact is we have not nearly enough room to handle our products with any degree of economy.

Now, Mr. Rockwood has referred to there being no connection with the Canadian Northern road, and I want to say that if there was a connection that would not make any difference, because there is no room for storage on the Canadian shore.

The only hitch that I care to mention in connection with the Canadian Northern is the fact that at the time we agreed that the connection should be made, we also had an understanding with them that the Province of Ontario was requiring us to build a dike along the river front, and we supposed that the Government owned the land along the shore from our connection and from the river bank up; but after we started to lay our track down there the Canadian Northern got an injunction out and restrained us with a permanent injunction from building that track. We then notified the Province that we would not build the dike until we could have the land to build it on, and my understanding is that the Province of Ontario now has reached an understanding with the Canadian Northern people in Toronto so we will be able to build that dike early this coming spring or late this winter. So there is no friction of any consequence with the Canadian Northern, and on general business principles we are giving them 800 or 1,000 cars of freight a month; but, in any event, if the connection was there that would not help us so far as storage is concerned.

Mr. Rockwood was slightly in error in his reference to the customs department. The customs department has requested us to pile wood of Canadian origin on the Minnesota side of the river separate from wood of American origin, and then provide a means of getting that wood separately from the storage ground on the Minnesota shore to the Canadian mill. That we have promised to do, so that the order that Mr. Anderson asked to have on record has not yet been completed. Up to date we have been taking that wood across there and paying the duty. It is the duty that we are obliged to pass along to the Canadian publishers that has caused objection, and this other plan has been worked out; so that by piling the wood on the Minnesota shore separately the customs department has now agreed that we will not have to pay any duty when it goes back into Canada.

It does seem to me that there is much ado here about a simple thing; that so long as the people of Canada and the United States

have ample facilities to navigate the Rainy River, and the only people who are suffering are ourselves who are very short of facilities for operating those big plants, there ought to be no hesitation about giving us all the room that can be spared.

Mr. GLENN. How much will this application increase your boom?

Mr. BACKUS. It will not increase it at all. They are asking us to diminish it. This application means that we cut down the boom where this pier is out in the middle of the river. It does not enlarge it; it reduces it. We would be tickled to death to have you say, "Let the boom stay where it is to-day." But the United States War Department says it can not approve this part of the boom because it understands that it is outside of the international boundary line. We are not asking for any more space.

Mr. GLENN. So that as the result of the approval of this application you would not interfere with navigation any more seriously than you are now?

Mr. BACKUS. Not a bit. To leave it exactly where it is now is what we would like to have. If the Canadians will approve that, the United States War Department, I am sure, will, and then by the approval of the department of public works of Canada we can leave it just where it is. We are not asking for any increase. That is the reason that I said I did not know whether you understood the situation or not.

Mr. GLENN. I thought this would enlarge it.

Mr. BACKUS. Not at all.

Mr. GARDNER. Have you ever had any complaint about navigation being restricted?

Mr. BACKUS. Not at all.

Mr. GARDNER. Of course, we have no jurisdiction over that.

Mr. BACKUS. No, sir; we never have had such complaints. It was only this trouble-maker at International Falls, who went to the War Department and asked Maj. Peek to send a man to see if we did not have one cluster of piles outside of where the permit authorized us to go, that brought on all this trouble. Now, that is the whole thing precisely.

Mr. MAGRATH. If you doubled your operations, Mr. Backus, what would you do for storage facilities?

Mr. BACKUS. We would have to get some on the Canadian side.

Mr. MAGRATH. And close up the river?

Mr. BACKUS. Along the Canadian shore. You would not get very much; you might get 100 feet from the mill up. That is where it is wide. It would not be enough to interfere with the navigation of the stream, with the boat navigation, but it would be difficult at best to increase the capacity of those mills and handle the forest produces with any degree of economy.

Mr. MAGRATH. Is it impracticable to do some of your storing about Pithers Point?

Mr. BACKUS. Well, that is what we do now—in the bays—and it is dangerous. You will remember that last year, when that storm broke, we lost 7,000,000 or 8,000,000 feet and have never gotten it back. The only place you are safe is when you get into the harbor. The Shevlin-Clarke people have three times as much space as we have, and they have none too much.



Mr. GLENN. You filed an application and a plan with it. Now, you say that plan, as you have filed it there, will not lessen navigation on either side any more than it is now.

Mr. BACKUS. From the way it is being used to-day, no, sir; and it will reduce our boom in one or two places slightly.

Mr. GLENN. And not increase it?

Mr. BACKUS. It will not increase it. It will do the other thing. Mr. George has called my attention to one thing: On the Canadian side he has made an application to the department of public works, for a narrow storage boom from the mill up to Portage Avenue, the town dock, which will hold for the Fort Frances mill about one day's supply of pulp wood.

Mr. GARDNER. Where is your reservoir to be to furnish that daily supply, in your regular boom?

Mr. BACKUS. On the Minnesota side; yes.

Mr. GARDNER. What is your practice in dumping your material into the river? Do you obstruct the waters in any way by piling it so that it goes clear to the bottom of the stream?

Mr. BACKUS. Take it in the wintertime, when the boom is entirely full and near the shore, you might say that it goes clear to the bottom, but so far as any noticeable effect on the river is concerned I do not think it is detrimental.

Mr. GARDNER. Have there ever been any complaints about that?

Mr. BACKUS. No, sir.

Mr. GARDNER. It occurs to me that that would be the only way that this commission would have jurisdiction here.

Mr. BACKUS. I presume that it would naturally raise the water on the other side of the river, but I mean not to a detrimental extent. Take it last spring, when we had flood waters. Of course, if there had not been a log in the river the water would have been just as high as it was.

Mr. GARDNER. The waters of Rainy Lake, I presume, are not as high at this season of the year as they are later on.

Mr. BACKUS. No, sir. Rainy Lake gradually goes down from this time until the middle of April.

Mr. GARDNER. Then the flood comes up.

Mr. BACKUS. Then you get the snow waters, the spring waters. But so far as the effect on the stream is concerned by piling this stuff off on the shores, it is not noticeable from a business and practical standpoint.

Mr. GARDNER. And it is only at this season of the year that it is your practice to dump the logs in there in such quantities.

Mr. BACKUS. Yes, sir; that is true.

Mr. ANDERSON. Mr. Backus, have you examined the plan filed by the Canadian public works department?

Mr. BACKUS. I have not.

Mr. ANDERSON. It is the plan that was shown here this morning. Mr. Rockwood had it. If you have not examined it, I suppose you are hardly in a position to say whether the plan is correct or not?

Mr. BACKUS. The question Gov. Glenn asked me was whether the plan as filed would enlarge the present boom.

Mr. ANDERSON. Yes; that is another point I was coming to, but I just wanted to start in with the plan as filed by the Canadian Government and ascertain whether or not you had seen that.

Mr. BACKUS. No; I have not examined it.

Mr. ANDERSON. It shows your boom as crossing the international boundary in two or three or perhaps more places.

Mr. BACKUS. Two, I understood.

Mr. ANDERSON. It shows more than that; I think certainly three, and perhaps more. I am speaking now of our map.

Mr. ROCKWOOD. Your map shows that in two places.

Mr. ANDERSON. Now, Mr. Backus, this is the plan as prepared by the Canadian public works department. This shows that your boom is across the boundary in three places. So far as you know that is correct?

Mr. BACKUS. So far as I know. That, of course, depends on where they locate the boundary line.

Mr. ANDERSON. Yes; that is assuming that the boundary line shown there is correctly placed.

Mr. BACKUS. Yes.

Mr. ROCKWOOD. But that is not what we are asking approval of.

Mr. ANDERSON. I know that. Now, in what respect does the plan that you are asking approval of differ from the present actual location of the boom in the river?

Mr. BACKUS. The only answer I can give to that is this: That we furnished Maj. Peek with a complete survey of our boom as now existing and he took that survey and laid it out on a plan of his own. It showed, as I remember it, that it was over the boundary line in two places. He was to get the approval of the War Department, or suggested that he probably could, so far as the boom was within the United States, and then left the rest for us to do—to go to the Canadian Government.

Mr. ANDERSON. Yes; but you are not asking now approval of any plan for a boom crossing the international boundary?

Mr. BACKUS. The plan he showed us kept within the boundary.

Mr. ANDERSON. You speak of a plan prepared by Maj. Peek. Is this plan that you filed here prepared by you or Maj. Peek?

Mr. ROCKWOOD. Maj. Peek. It is so marked.

Mr. ANDERSON. Mr. Backus, did you prepare a plan for submission to the United States War Office?

Mr. BACKUS. We used this plan.

Mr. ANDERSON. He made the plan and you used it.

Mr. BACKUS. We gave him the survey and he made the plan.

Mr. ANDERSON. This plan can not correspond with the survey, because the survey would indicate that your boom crosses the international boundary at those three places.

Mr. BACKUS. Well, I understand that where it did cross the boundary he drew his outside line. I mean that it did not show those points.

Mr. ROCKWOOD. Let me suggest, Mr. Anderson, that I think we misunderstand each other. It is true that the boom as now located on the ground is across the boundary in two or three places. Now, we are not asking approval of that. Maj. Peek made this plan to be approved and recommended its approval. We adopted his recommendation and are asking nothing but the approval of Maj. Peek's plan, which confines the boom to the south half of the river.

Mr. BACKUS. And that does not show where the present boom overlaps.



Mr. ANDERSON. No; that shows that you are coming up to the international boundary line at a considerable portion of the boom; that is all.

Mr. BACKUS. But that does not increase the present boom.

Mr. ANDERSON. No; I understand that you are not proposing to increase the present boom but desire only to straighten it out so as to prevent the encroachment upon the Canadian side of the boundary.

Mr. BACKUS. Yes, sir.

Mr. ANDERSON. Well, that clears that up. Now, with reference to your application for booming privileges upon the Canadian side. What is the present standing of that application?

Mr. BACKUS. I think Mr. George probably can tell you better than I can.

Mr. ANDERSON. You could file, I suppose, a copy of the plan of that proposed boom?

Mr. BACKUS. Mr. George, does it show on this plan?

Mr. ANDERSON. No; it does not show on this plan.

Mr. BACKUS. Have you a plan that it does show on now, Mr. George?

Mr. GEORGE. I think I probably have in my grip.

Mr. ANDERSON. The only thing is I want the commission to understand that if a boom is built upon the Canadian side the space occupied in the river——

Mr. BACKUS (interrupting). That is entirely below this boom up here. That will be down in there like that [indicating]. There is no navigation where that boom is to exist.

Mr. ANDERSON. Do you suggest that that boom would not be sufficient, even if it were granted, for your purposes on the Fort Frances side?

Mr. BACKUS. That would not hold one day's supply.

Mr. ANDERSON. That would simply help the situation.

Mr. BACKUS. No; when you bring one of these booms down it furnishes one day's supply. We now have to leave that bag boom there.

Mr. ANDERSON. Where does the wood come from that goes into your present boom?

Mr. BACKUS. It comes from every direction, from up the lake, from Canadian territory and Minnesota territory, and it is stored wherever we can find a space to store it.

Mr. ANDERSON. Is any of it stored on the banks of the river?

Mr. BACKUS. Well, so that it rolls in. We put it out in the river as far as we can and pile it up on the banks, and then as we pull it away the other rolls in.

Mr. ANDERSON. All the timber that is obtained by you from the Canadian side is hauled in the first place over the Canadian Northern Railway, is it?

Mr. BACKUS. Yes.

Mr. ANDERSON. What is to prevent that timber being delivered at your plant in Fort Frances?

Mr. BACKUS. Well, it is delivered there when you do not want it.

Mr. ANDERSON. Why can you not store it there?

Mr. BACKUS. There is no land facility for storing it.

Mr. ANDERSON. On that question of land facilities I have a map here that has been prepared by the town of Fort Frances. It is the property marked in red. Where is your mill situated there?

Mr. BACKUS. Right here [indicating]. That is the pulp mill. There is where the wood comes into the mill.

Mr. ANDERSON. Now, let us locate it on this map. It is located on the river front between Church Street and Nelson Street.

Mr. BACKUS. Yes, sir.

Mr. ANDERSON. Is the mill located on the river front within those streets, too?

Mr. BACKUS. The pulp mill?

Mr. ANDERSON. Yes.

Mr. BACKUS. No, sir; the pulp mill is located on the opposite side of the Government canal.

Mr. ANDERSON. On the portion marked red?

Mr. BACKUS. The portion marked red. The paper mill is situated between Church Street and Scott Street on the river front, west of Front Street.

Mr. ANDERSON. What would there be to prevent you from acquiring further land between Scott and Church Streets for purpose of storing?

Mr. BACKUS. They are occupied by stores and hotels and various other buildings for business purposes.

Mr. ANDERSON. Can you tell me which of the lots the business properties are located upon there?

Mr. BACKUS. The business properties are located largely upon the lots in these two blocks [indicating].

Mr. ANDERSON. You have acquired, as a matter of fact, some property there recently, Mr. Backus?

Mr. BACKUS. I think we have acquired three lots.

Mr. ANDERSON. Lots F, G, and H.

Mr. BACKUS. Yes, sir; but not all of H. We have acquired F, G, and a part of H.

Mr. ANDERSON. Is it true that at one time you had expropriation powers given you by the Government with reference to this property?

Mr. BACKUS. Not with reference to the property north of Church Street; only a certain district from the river front up to Portage Avenue.

Mr. ANDERSON. You never exercised that right of expropriation?

Mr. BACKUS. No, sir.

Mr. ANDERSON. If you did own the block there located between Mowat, Front, Nelson, and Church Streets, it would afford some storage facilities, would it not?

Mr. BACKUS. The principal stores in the city of Fort Frances are on that block.

Mr. ANDERSON. Were they there when you were given the powers to expropriate?

Mr. BACKUS. Yes, sir.

Mr. ANDERSON. Why did you get the power?

Mr. BACKUS. It was to get the lots we originally purchased and lots A, B, C, and D.

Mr. ANDERSON. At any rate, it is a question, I suppose, of expense of acquiring property, and if you had the right of expropriation that would be the problem.



Mr. BACKUS. That would not solve the question of the vast amount of material necessary to run that mill. The storage you would get in a small area like that would not cut much figure.

Mr. ROCKWOOD. Will you state the number of cords you would have to accumulate, Mr. Backus?

Mr. BACKUS. That mill consumes between 40,000 and 50,000 cords of wood a year.

Mr. ANDERSON. What amount of land would be necessary upon which to pile that much wood?

Mr. BACKUS. You can not afford to pile it all in a pile.

Mr. ANDERSON. I can understand that, because you would not use it all at once.

Mr. BACKUS. I mean you can not afford to put it all in a pile. You want as much in the water as you can keep there so that the expense would be no greater than you are absolutely compelled to have.

Mr. ANDERSON. Why is it any cheaper in the water than it is on the land?

Mr. BACKUS. You put it in a pile and it costs you 35 cents a cord to put it in and 25 cents to take it out. That is 60 cents a cord against say 10 cents altogether the other way.

Mr. ROCKWOOD. What about depreciation?

Mr. BACKUS. And the question of deterioration comes in also.

Mr. ANDERSON. Does it deteriorate more upon land than it does in the water?

Mr. BACKUS. Oh, yes.

Mr. ANDERSON. Then the question of the Canadian Northern connection really has not anything to do with it.

Mr. BACKUS. That is what I stated: it has nothing whatever to do with that wood storage, excepting with reference to this part of the track along in here on the river front where we unload. It would be very much cheaper for us to handle the wood in that way than it would be to bring in two or three cars and have to switch them and then go back and get two or three more and switch them.

Mr. ANDERSON. If you had arrangements with the Canadian Northern by which they would bring your wood——

Mr. BACKUS. That would not affect the storage wood.

Mr. ANDERSON. But it would help the situation.

Mr. BACKUS. Yes; slightly, but it would not relieve the storage situation at all.

Mr. ANDERSON. I imagine that if you applied to the railway board of Canada you would have no difficulty in having them compelled to do that.

Mr. BACKUS. There is no disagreement with the Canadian Northern people to that extent.

Mr. ANDERSON. I want permission to file a blue print of this plan. Mr. Backus, I do not know that I quite understand the situation as to dumping the logs there in the wintertime. To what extent do you accumulate logs at the boom in the wintertime?

Mr. BACKUS. We accumulate a very large supply in the wintertime.

Mr. ANDERSON. Where are those put?

Mr. BACKUS. Those are all put on the American shore.

Mr. ANDERSON. But are they placed within the limits of the boom or on the bank at the edge of the boom?

Mr. BACKUS. Yes, sir; and then they float out in the river so far as the boom will permit them to go.

Mr. ANDERSON. But do you keep on putting the logs in the river after the ice is formed?

Mr. BACKUS. Yes.

Mr. ANDERSON. So there is a large accumulation of logs there during the wintertime.

Mr. BACKUS. Yes, sir.

Mr. ANDERSON. And you say in the spring they go to the bottom?

Mr. BACKUS. Yes.

Mr. ANDERSON. How far out does that extend?

Mr. BACKUS. That extends practically to the outside edge of the boom.

Mr. ANDERSON. When that condition of affairs exists, then, it does necessarily affect the flow of the water upon the Canadian side?

Mr. BACKUS. I imagine it must raise the water slightly; I do not know.

Mr. ANDERSON. It may raise it considerably. You have not taken any observation to notice that?

Mr. BACKUS. No, sir.

Mr. ANDERSON. There is a good deal of difficulty in the spring of the year when the water is high in keeping your sluice gates open, is there not, on account of the floating logs?

Mr. BACKUS. Well, there was last year, during the flood waters such as occurred last spring.

Mr. ANDERSON. And the more logs are there the more difficulty there is at the sluice gates?

Mr. BACKUS. If they get away; yes.

Mr. ROCKWOOD. I think you misunderstand the question, Mr. Backus. Do you mean that the logs prevented the opening of the waste gates?

Mr. BACKUS. No.

Mr. ANDERSON. They do not prevent them, but they obstruct them, do they not?

Mr. BACKUS. The opening of the waste gates makes the current very strong, and, of course, that interferes with the handling of the logs.

Mr. ANDERSON. And the logs accumulate and have a tendency to prevent the water from getting away.

Mr. BACKUS. Slightly, not to any material extent.

Mr. ANDERSON. Well, last year it had quite an effect.

Mr. BACKUS. Not materially.

Mr. TAWNEY. Mr. Backus, this proposed boom is not intended to be constructed down to the dam, is it?

Mr. BACKUS. You were not here when I told Gov. Glenn that the proposed boom is just where it is now, except in two places where they say it goes over the boundary line it is lessened. This is not a new boom at all; this is the same boom we have to-day, except that the department claims in two places it goes out across the boundary line. It is smaller instead of larger.

Mr. MURRAY. Mr. Backus, I understand from what you say that you have switching rights with the Canadian Northern Railway; that is, the Canadian Northern Railway is willing to install a switch opposite your mill.



Mr. BACKUS. No; we have arrangements with them that are satisfactory, but the adjustment of the strip of land upon which to build the dike has not been settled yet.

Mr. MURRAY. I understand that, but so far as any switching privileges are concerned you and the Canadian Northern do not disagree at the present time.

Mr. BACKUS. No.

Mr. MURRAY. I am told that some three years ago the Dominion Railroad Board did make an order on consent that a switch should be put in opposite the hotel.

Mr. BACKUS. That is my understanding of it, but when we disagreed on the other points Sir William said, "We will hold up the other matter until it is all worked out together."

Mr. MURRAY. Still you have that order of the railroad board and you can compel them to go ahead if you wish to?

Mr. BACKUS. Well, I do not feel like forcing it.

Mr. MURRAY. The fact is that you do pile a large quantity of pulp wood on the International Falls side, on the shore near the mill?

Mr. BACKUS. Yes, sir; there is no other place to pile it. If you could keep it in the river you would not put it up there.

Mr. MURRAY. However, it is quite feasible to pile it on the shore.

Mr. BACKUS. It is feasible when you have to, but it is expensive.

Mr. MURRAY. There is no reason why pulp wood should not be shunted down or taken down in cars along the Canadian Northern track to the river shore, is there, just where this map shows—say opposite Nelson Street?

Mr. BACKUS. In cars from where?

Mr. MURRAY. In cars from their main line east or west; brought directly down instead of being brought around by the Duluth, Winnipeg & Pacific connection.

Mr. BACKUS. I am not making any point on that.

Mr. MURRAY. I say, there is no reason why it should not be done in that way?

Mr. BACKUS. It could be done in that way, but that has nothing to do with this case.

Mr. MURRAY. That is for us to see later. I only want to ask your opinion as a witness on that point. Now you first made the agreement with the Ontario government in 1904, did you not?

Mr. BACKUS. Yes, sir.

Mr. MURRAY. The 17th of February, 1904. The commissioners will find the agreement set forth in the appendix of the Lake of the Woods hearings held at Winnipeg. Under that agreement, Mr. Backus, of the 17th of February, 1904, this land which is colored red on this map was all you were to get, was it not?

Mr. BACKUS. I do not remember whether that was the limit of it or not, but I presume so.

Mr. MURRAY. I just want to ask you about it briefly.

Mr. BACKUS. Mr. George will probably know. I presume it was.

Mr. MURRAY. Then you go so far as to say that you presume that is so. I do not want to read the document; it is too long.

Mr. BACKUS. If you say that is so, it is so.

Mr. MURRAY. Messrs. Commissioners, Mr. Backus states that the land colored red on the map was all the land that he was to get

under the agreement of the 17th of February, 1904, which a reference to the agreement itself shows to be the fact. Then, Mr. Backus, at that time the land that is afterwards added to that to which you refer in your brief was in the possession of the Government in trust for the town of Fort Frances—that strip along the shore?

Mr. BACKUS. No; in the modified agreement of 1905 the land was turned over to us, and then in 1906 it was by legislation put into the hands of the Crown.

Mr. MURRAY. You are getting a little too fast. My question was whether or not in 1904, at the time of the agreement, the land that you afterwards acquired along the shore, this narrow strip, was vested in the Crown?

Mr. BACKUS. It was in the Crown.

Mr. ROCKWOOD. Not by the act of 1906.

Mr. MURRAY. No; it was vested in the Crown prior to that. That land was a narrow strip along the shore from Butler Street on the east to Victoria Street on the west, a strip of land perhaps 40 or 50 feet wide. Is not that true?

Mr. BACKUS. Yes. The width varied.

Mr. MURRAY. The strip is shown on the map that I produced, and also on the other maps. That land is under water now, is it not?

Mr. BACKUS. No; I do not think all of it is.

Mr. MURRAY. Do you not think that all that outside of the 66-foot roadway known as Front Street is under water?

Mr. BACKUS. I do not think all of it is. I would not testify as to what part of it is or is not.

Mr. MURRAY. Do you know of any that is not, Mr. Backus?

Mr. BACKUS. Yes; I think there are some portions of it that are high that are not.

Mr. MURRAY. That is possibly the Smith property. But if you refer to the contour map that was put in by the Dominion Government I think you will find that practically all that land is under water. Did you check it up?

Mr. BACKUS. Well, I can not understand what this has to do with this case.

Mr. MURRAY. Well, never mind that. I am asking the questions.

Mr. BACKUS. If you are filing some lawsuit or getting ready for it that is one thing, but if you are trying to get this commission information that is another thing.

Mr. MURRAY. I want to get the commission information. In the agreement of the 9th of January, 1905, there was a provision that you were to get that narrow strip of land extending from Butler Street to Victoria Street? That is where you claim to have gotten it!

Mr. BACKUS. Yes, sir.

Mr. MURRAY. And under that agreement you obtained greater privileges, did you not, in respect to export power?

Mr. BACKUS. The agreement was modified. I do not see that that has anything to do with this case.

Mr. MURRAY. In other words, you were not required to use one-half the power on the Canadian side unless there was some particular use for it there; you could export what was not being used on the Canadian side?

Mr. BACKUS. Yes, sir.



Mr. GLENN. Mr. Murray, I would like to ask a question for my information. If, as a matter of fact, this application is not to increase this boom, but, on the contrary, to reduce it altogether on the American side, would the city of Fort Frances still have objection to that?

Mr. MURRAY. The town has this objection, sir: that the boom is too close to the boundary now. We are not looking so much to the present. At the present time navigation is not seriously obstructed, although there were obstructions there last year. What we fear is that once this boom is established it is going to be a very difficult matter to get it removed.

Mr. GLENN. Has there ever been any effort made by your town or the Province of Ontario to get these things removed on account of obstruction to navigation?

Mr. MURRAY. Not at all.

Mr. GLENN. If this application is to simply reduce it, would there be any objection?

Mr. MURRAY. We are looking to the time when the traffic of the river will increase very materially. The traffic, we think, will increase in the future very much by reason of the occupancy of the islands in Rainy Lake by summer tourists and also the business traffic up and down the lake.

Mr. GLENN. If that congested condition does take place, it is an easy matter to get rid of it, is it not?

Mr. MURRAY. You know what vested rights are.

Mr. GLENN. There are no vested rights in this kind of business; but you do not mean to tell me that you would be willing to hamper a big business interest if it affects both sides and is a great profit to their neighborhood, and you would not stop it now because five or six years in the future you might have need to change it?

Mr. MURRAY. Not at all, sir; but my point is that Mr. Backus or his company can have ample storage facilities for his pulp wood on the shore. There is ample land there that he can acquire.

Mr. GLENN. He just stated that there was a difference of 60 cents a cord as against 10 cents a cord for piling.

Mr. MURRAY. That may be so.

Mr. GLENN. Is there any necessity of putting a big business concern that is doing a great work in the neighborhood to that expense and trouble when there is no need for it on account of obstruction to navigation?

Mr. MURRAY. I do not quite take the view that because Mr. Backus and his companies have established a large industry that the public interest should suffer.

Mr. GLENN. I am not talking about Mr. Backus or anybody else, but when one Government says that a boom is on its side of the line entirely and consents to it, and we do not see that you are injured by it, would you necessarily think it would be best to restrict it at the present time?

Mr. MURRAY. If we were quite sure that that boom as it is proposed to construct it would be removed within a reasonable time—

Mr. GLENN. But you can do it at any time you get ready.

Mr. MURRAY. We would have to apply to the United States Government, I suppose, and prove our case and be met with a good deal

of opposition here and perhaps meet with this objection, that the boom has been there for so many years and why alter conditions. What we say is that here is a public navigable stream, and that the motor boat traffic being crowded to the Canadian side tends to wash away the banks of the river and make the river unsafe for small boats.

Mr. GLENN. Do you say that?

Mr. MURRAY. That is the condition at present.

Mr. GLENN. Do you say that the river is not navigable now on account of it?

Mr. MURRAY. The river is navigable, but I say there is a tendency to render conditions more dangerous than they should be.

Mr. TAWNEY. Mr. Murray, do you intend to present evidence here to that effect?

Mr. MURRAY. No; I do not propose to call any witnesses as to that any more than perhaps the reports of the engineers.

Mr. TAWNEY. What I want to get at is whether we are proceeding here in an orderly form or whether we are supposed to decide this question on the mere statements of counsel and without regard to any evidence whatever. This is a proceeding in which, if we have jurisdiction at all, our decision is final, and our decision ought not to be rendered on the mere statements of counsel, however eminent.

Mr. MURRAY. I quite agree with you.

Mr. TAWNEY. Our proceeding ought to be had upon testimony in an orderly manner.

Mr. MURRAY. Your commission, sir, has already taken in another investigation a good deal of evidence on the state of the river, on the erosion of the banks.

Mr. TAWNEY. But even that, unless it is presented here, could not be considered in this application, if we have jurisdiction.

Mr. MURRAY. I assume that anything relating to Rainy River that has been up before you in the way of evidence will be received.

Mr. TAWNEY. If you intend to offer it as evidence in this case it may be received as such, because it was taken under oath with the opportunity for cross-examination.

Mr. MURRAY. That is the extent to which I propose to go, and no further.

Mr. TAWNEY. I simply wanted to inquire whether you are making a preliminary statement to the commission now with the idea of supporting it by testimony, or whether you expect us to consider your mere statement before the commission unsupported by testimony?

Mr. MURRAY. We do not want to be unreasonable with the company.

Mr. TAWNEY. I am not asking you in reference to your attitude toward the company at all. I called attention to it because our decision, if we find we have jurisdiction, is final, and we ought to proceed as any other judicial tribunal would in a matter which is absolutely final and binding upon all parties in interest.

Mr. ROCKWOOD. Mr. Chairman, Mr. Backus tells me that he has some very important mail to get off, and, if possible, he would like to be excused now. It is half past 5. If you wish to meet to-night, we can do so.

Mr. GARDNER. I do not think we will meet again until the arrival of the absentees.



Mr. MURRAY I wish to cross-examine Mr. Backus a little further.

Mr. TAWNEY. Well, he will be here in the morning, will he not, Mr. Rockwood?

Mr. ROCKWOOD. Yes, sir.

(Thereupon, at 5.30 o'clock p. m., a recess was taken until 10 o'clock a. m. Tuesday, Jan. 23, 1917.)

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TUESDAY, *January 23, 1917.*

The commission met at 10 o'clock a. m., all the members being present, Mr. Gardner presiding.

There were also present Mr. Manton M. Wyvell, representing the United States Government; Mr. W. W. Evans, representing the Canadian Northern Railway.

Mr. GARDNER. Gentlemen, we are ready to proceed now. Mr. Wyvell, counsel for the United States Government, is now present. We proceeded yesterday with the hearing during his absence, and I would suggest that Mr. Tawney call his attention now to what was done yesterday and the reason therefor. Then Mr. Wyvell can follow with any statement he cares to make in reference to it.

Mr. TAWNEY. I would say, Mr. Wyvell, for your information, that the commission understood that you were unavoidably delayed, and, not wishing to delay the proceedings, we heard the testimony with reference to the application. In the course of the proceeding it was discovered that this is an application filed by the Government of the United States, or that certain correspondence has been filed as an application by the United States upon the theory that, because of the proximity of the boom proposed to the international boundary, the authorities of the United States Government felt that this commission ought to pass upon the application of the International Lumber Co. for the construction and maintenance of that proposed boom. You are more familiar with the facts in connection with the application than the commission, and if you have any statement to make now, the commission will hear it.

Mr. WYVELL. Of course, I was unavoidably detained on account of the weather.

Mr. TAWNEY. We understood that.

Mr. WYVELL. The correspondence, which I understand has been read into the record, is not as complete as it ought to be.

Mr. TAWNEY. Pardon me, but I do not think it has been read into the record or offered in evidence.

Mr. WYVELL. At any rate, the correspondence that has been filed with the commission is not as complete as it ought to be. There is no question in the minds of the Government authorities, I suppose, but what the placing of the boom as it is would certainly affect the flow of the river on the Canadian side. Probably theoretically, of course, it also affects the level. So I have no hesitancy in saying that the additional reason—perhaps, the real reason—for submitting the application is that it does affect the level and the flow on the Canadian side of the river, bringing, of course, the matter squarely within Article III of the treaty.

I want to correct one impression, however. It is not an application filed by the Government. What the Government does is to transmit the application of this company.

Mr. TAWNEY. The application of the company was not an application to the commission. The application of the company was an application to the Secretary of War for the approval of its plans for a modification of or changes in the proposed boom.

Mr. WYVELL. That is true, but the application was submitted to the Secretary of War, and it also made reference to the International Joint Commission. Certainly inferentially the applicants desired that it be referred to the commission.

Mr. POWELL. We have so treated it, Mr. Wyvell, and it is here and we have to go on with it.

Mr. WYVELL. The applicants likewise submitted a reply statement in which they entitled their papers "International Joint Commission." So we are transmitting an application of this company for action squarely within Article III of the treaty in accordance with the rules laid down in rule 6.

Mr. MIGNAULT. My impression was that it followed rule 6.

Mr. WYVELL. Yes; it does follow rule 6.

Mr. POWELL. As I understand it, there was some doubt at the office at Washington as to whether or not this did not come within the principle of *de minimis*; that there would be no interference with the waters on the Canadian side. Is that the idea?

Mr. WYVELL. I have not heard officially that that is true, but I did hear a little talk to the effect that the War Department felt that the interference was so slight on the Canadian side that they hesitated about sending it, but finally decided to send it.

Mr. POWELL. We had a similar matter before us in the application of the Watrous Island Boom Co. for the erection of piers, and inasmuch as the storage of logs sometimes is not confined to the surface but during freshet times may be piled several feet deep and entirely obstruct the flow of water, we considered the matter as coming substantially within the treaty and passed upon it. This is a similar case.

Mr. WYVELL. From personal observation I should say that this matter was of such importance that it certainly ought to be passed upon by the commission.

Mr. POWELL. Well, it is here and we are here to pass on it.

Mr. GARDNER. Mr. Rockwood, are you ready to proceed now?

Mr. ROCKWOOD. I am, Mr. Chairman, and Mr. Backus is here.

Mr. POWELL. For the benefit of those who were absent yesterday I would like to have some one state briefly what was done in the matter of giving evidence.

Mr. MURRAY. Mr. Backus has been the only witness called heretofore, and he was called by Mr. Rockwood to support the application, to show the location in part of the boom, and the reason the application is now before the commission.

Mr. POWELL. What reason did he give?

Mr. MURRAY. I think the substance of what Mr. Backus said was that the boom was placed, or intended to be placed, where permission had been granted to put it by the War Department away back in 1911.

Mr. POWELL. Which permission had never been acted upon?

Mr. BACKUS (interrupting). Oh, yes.



Mr. MURRAY. He said it had been acted on, but by some error in changing or replacing the piles it had been extended somewhat over the Canadian boundary; but that he was quite willing and intended to restore the boom to the limits to which it was confined under the order of the War Department in 1911. He said that the effect would be to lessen the present de facto limits of the boom.

Mr. POWELL. Then, if these modifications are made in order to make the boom conform to the previous authority from the War Department, the application is simply one to recognize the matter on the part of this commission so as to get over the international difficulty?

Mr. MURRAY. I presume that the effect of this boom would really be to confirm what the War Department did in 1911.

Mr. POWELL. That is it, Mr. Backus, is it?

Mr. BACKUS. That is about it.

Mr. ANDERSON. I do not think that is exactly the situation, because Mr. Backus has applied now to the War Department for approval of plans for a boom, those plans being now before the commission, and it is that application that has been referred here through the War Department. So it is not an application covering the old order.

Mr. POWELL. Well, so far as the locus is concerned, does it cover the same territory?

Mr. ANDERSON. We do not know. I suggested that the order of the War Department of 1911 should be filed.

Mr. MURRAY. I am stating the case on the grounds that Mr. Backus stated it; I am not committing myself to those facts at all, but that is simply a summary of his statement of yesterday.

Mr. ROCKWOOD. May I call the attention of Commissioner Powell and Commissioner Mignault to the map prepared by the Dominion Government which shows the location of the existing boom?

Mr. POWELL. Does it also show the location of the contemplated boom?

Mr. ROCKWOOD. I think it does, substantially; certainly with the two maps together. This map that I hold in my hand is the one on which the application is based. It was prepared by Maj. Peek, of the War Department, and it was prepared after the Boundary Commission had fixed, at least tentatively, the boundary line.

Mr. POWELL. Where do you propose putting the boom?

Mr. BACKUS. At the same place.

Mr. MAGRATH. Is there any additional boom that you want to put in?

Mr. BACKUS. No, sir: we just ask permission to leave it where it is and where it has been for years. The War Department of the United States said it bulged over the line in two places, and that they did not have authority to grant that portion of it.

Mr. MAGRATH. But you are not increasing the length of the boom as it exists to-day under this application?

Mr. BACKUS. Not at all. There are two places where it would be pulled back.

Mr. POWELL. That is all right, is it, Mr. Murray?

Mr. MURRAY. That is what Mr. Backus contended yesterday. I have directed my cross-examination in the line of combating certain statements in the reply statement filed by Mr. Backus through Mr.

Rockwood. Those statements were along the line that Mr. Backus had no other facilities for storing pulp wood, and that under an agreement with the Government or the Province of Ontario, dated the 9th of January, 1905, he had been deprived by legislation enacted in the year 1906 of a strip of land which was intended to be used for the purpose of his lumber and pulp business at Fort Frances. That was the line of my cross-examination, and I was just proposing to continue from where I left off.

Mr. Backus, the agreement of 1905 differed from that of 1904 in this respect, among other things, that in 1904 you had no land except that colored red on the plan that I showed you yesterday.

Mr. ROCKWOOD. Mr. Chairman, I would like to raise the question as to whether the agreement of 1904 is material or whether the commission desires to consider it. It was entirely superseded by the agreement of 1905 and as that agreement was modified by the act of 1906. Now, this goes into matters that were preliminary—not strictly preliminary, but negotiations that antedated the agreement of 1905 under which the dam was built and the power house on the Canadian side and afterwards, with certain supplementary agreements, the pulp and paper mill on the Canadian side were constructed.

Mr. POWELL. I suppose Mr. Murray does not submit it as a matter that would legally affect things, but as a fact in the chain of circumstances which might affect our decision.

Mr. MURRAY. That is it, and there is rather an insinuation in the statement filed by Mr. Rockwood that this company had not been fairly dealt with by the town in that by persuading the Ontario government to withhold a grant in the former deed of 1905 it had deprived Mr. Backus of something.

Mr. POWELL. That will come up in argument.

Mr. MURRAY. Yes; I simply want to refer to these matters so as to get them properly before the commission.

Mr. ROCKWOOD. In response to that I want to say that I did not mean to state that it was unfair. I spoke of it as a fact that left the Fort Frances industries without facilities on that side and compelled serving them by means of this boom. I did not mean to criticize it, but simply to state the fact.

Mr. MURRAY. Mr. Backus, in 1906 chapter 132 of the Ontario statutes was passed, was it not, by which this strip of land that you refer to was taken away?

Mr. BACKUS. Yes, sir.

Mr. MURRAY. That statute, I may say, recites the fact that this strip of land had been included in the agreement with Mr. Backus without notice to the town and the town had afterwards objected, and this strip was revested in the Crown in trust. I will refer to the agreement later on.

Mr. POWELL. Have you a plan showing that strip of land?

Mr. MURRAY. Yes, sir; it is the strip from Victoria Street up to Butler Street, on the Canadian side.

Mr. POWELL. And the old agreement vested this in Mr. Backus, did it?

Mr. MURRAY. The agreement of 1904 did not; the agreement of 1905 did and then the statute of 1906 took it away again.



Mr. POWELL. For what purposes was the land vested in this company?

Mr. MURRAY. It does not say.

Mr. POWELL. Can you state generally what the purposes were?

Mr. MURRAY. It is hard to say what use could have been made of such a narrow strip, but, at any rate, that is the fact.

Then, Mr. Backus, you made an agreement with the town of Fort Francis, did you not, by which you agreed to build a pulp mill, and so forth?

Mr. BACKUS. Yes, sir.

Mr. MURRAY. My learned friend admits that this is a true copy of the agreement?

Mr. POWELL. I think we can take judicial notice of this at this time.

Mr. ROCKWOOD. This is the later agreement for the construction of the paper mill.

Mr. MURRAY. It was provided in that agreement, was it not, that you were to have the right, with the assistance of the town of Fort Frances, to expropriate a large area of land along the water front?

Mr. BACKUS. I think so.

Mr. MURRAY. And that the town would close certain streets?

Mr. BACKUS. I think so.

Mr. MURRAY. I do not want to go into the facts in detail. We can refer to them later.

Mr. POWELL. Is that agreement still in effect?

Mr. MURRAY. The agreement is in effect.

Mr. BACKUS. But the right to expropriate is not.

Mr. POWELL. It was removed or canceled by the legislature?

Mr. BACKUS. It expired by lapse of time.

Mr. MURRAY. Then, in pursuance of that agreement there was an Ontario statute passed in 1912, was there not?

Mr. BACKUS. Yes, sir.

Mr. MURRAY. The agreement is dated in February, 1912, and the Ontario statute was promptly passed and assented to on the 16th of April, 1912. It is chapter 152 of the statutes of 1912. By that statute you did acquire the right by legislation to expropriate about 12 acres, Mr. Backus, did you not?

Mr. BACKUS. I could not say what the acreage was.

Mr. MURRAY. At all events, referring to the plan, it was all these lots bounded on the north by Nelson Street and on the east by Portage Avenue and on the south and west by the Rainy River.

Mr. BACKUS. I think that is about the area; yes, sir.

Mr. MURRAY. And that would comprise over 12 acres, would it not, excluding the road allowances?

Mr. BACKUS. I should say about that. I do not know that I have ever figured it up.

Mr. MURRAY. I have made an estimate, and I think that is about right. Now, I will give you the numbers of the lots. They are A, B, C, D, F, G, H, and X, and the south 34 feet 4 inches of I and J. Those are the lots next to the water front. Mr. Backus said that the lots on Church Street were excluded.

Mr. POWELL. Those were expropriated?

Mr. MURRAY. Legislation was passed giving to the company or Mr. Backus the right to expropriate and invoke the provisions of

the interior railway act in aid of proceeding. There was a time limit, was there not, Mr. Backus, of a year?

Mr. BACKUS. Yes, sir.

Mr. MURRAY. You did not take advantage of the act?

Mr. BACKUS. No, sir.

Mr. MURRAY. I presume you intended to use that land, not only for the erection of a paper mill, but also for storage ground for your material and pulp wood at that time?

Mr. BACKUS. Yes.

Mr. MURRAY. How many men do you employ in your pulp and paper industry at Fort Frances?

Mr. BACKUS. Oh, roughly speaking, about 250 men.

Mr. MURRAY. I have a statement filed by your auditor, Mr. MacLaren, with the town assessor and sworn to by Mr. Spencer, which I presume you would admit as accurate, would you not?

Mr. BACKUS. That depends on what crews he included.

Mr. MURRAY. I will not take much time with it. It is pretty nearly the same as your statement—214 men in March last?

Mr. BACKUS. That might not have included the outside gang, but, roughly speaking, 250 men. That does not include bushmen.

Mr. MURRAY. But this is the gang or staff that you employed in the paper and pulp mill at Fort Frances?

Mr. BACKUS. I have testified approximately 250.

Mr. MURRAY. You know the signature of Mr. MacLaren?

Mr. BACKUS. Yes.

Mr. ROCKWOOD. I have no doubt it is correct. Mr. Backus might look at it and see.

Mr. BACKUS. I do not know about this list. These signatures are all Mr. MacLaren's, but the statement of the number that might have been employed in April might not be true in June; I would say, roughly, the average would be about 250 men.

Mr. MURRAY. I will file this.

Mr. TAWNEY. You are offering that in evidence, in view of his statement.

Mr. MURRAY. Yes.

Mr. TAWNEY. What is the use of lumbering up the record?

Mr. MIGNAULT. Mr. Backus can not speak as to its accuracy. He merely certifies that the signatures are genuine. I do not see the relevancy of this.

Mr. TAWNEY. It is hardly necessary to put it in the record, in view of Mr. Backus's admission that they are employing that number of men, unless you want to prove Mr. Backus's statement is not true.

Mr. MURRAY. I realize he must be about right, because he says 214 in March, the date of this return. There may be more and may be less. Thirty or forty men are not very material, and I will let it go at that. How much wood do you use in a day in the Fort Francis mill on the average?

Mr. BACKUS. Well, that mill produced between 40,000 and 45,000 tons of paper per annum, and it takes about a cord to a ton, exclusive of the sulphite; that means about 40,000 to 45,000 cords of wood per annum.

Mr. MURRAY. I understood your statement yesterday—perhaps I was wrong—that you used altogether about 40,000 cords of wood in a year?



Mr. BACKUS. I say that now.

Mr. MURRAY. I understand that to mean in mills on both sides?

Mr. BACKUS. Oh, no; 200,000 and over.

Mr. MURRAY. Your statement yesterday of 40,000 referred to the Fort Frances mill?

Mr. BACKUS. Yes, and that is exclusive of the sulphite, which is now manufactured in Minnesota.

Mr. MURRAY. Can you tell what the average per day is?

Mr. BACKUS. Well, that means about  $133\frac{1}{3}$  cords of wood in a day. I want to state right here that several years, even before we were running at full capacity, our wood stock amounted to over 210,000 cords per year. Right to-day, when we get a full stock for both sides of the river, it means 225,000 cords, and you can pile and pile and pile, and you have not enough space to take care of it.

Mr. POWELL. In superficial feet it would be somewhere in the vicinity of 200,000,000?

Mr. BACKUS. It would be about 125,000,000 feet.

Mr. MURRAY. And this pulp wood is delivered by rail principally, at some points along the C. N. R.?

Mr. BACKUS. Yes.

Mr. MAGRATH. What proportion of that pulp wood do you get in the two countries, roughly?

Mr. BACKUS. You mean combined?

Mr. MAGRATH. Yes.

Mr. BACKUS. About three-quarters in Minnesota and about a quarter of it in Canada.

Mr. MURRAY. You are referring to the combined pulp wood for the purpose of supplying both mills?

Mr. BACKUS. Yes.

Mr. MURRAY. And do you bring across from the Minnesota side to Canada any wood that is cut on the Minnesota side?

Mr. BACKUS. Yes.

Mr. MURRAY. I do not mean wood you have taken across for storage purposes, but wood you have taken from the Minnesota land.

Mr. BACKUS. Yes.

Mr. MURRAY. Your mill on the Minnesota side at International Falls is what is known as a four-machine mill?

Mr. BACKUS. Yes.

Mr. MURRAY. With each machine having a nominal capacity of 50 tons per day, perhaps a little better?

Mr. BACKUS. If you want to be a little more specific about it, we are making about 140 tons of paper a day at Fort Frances and 220 tons a day at International Falls; that is 360 tons. In the month of January, up to this minute, it has that average.

Mr. MURRAY. Your Fort Frances mill, although it is only a two-machine mill, seems a little more effective than the other?

Mr. BACKUS. Yes; it is a better mill for its size than the Minnesota mill.

Mr. MURRAY. You have on the Minnesota side a very large sulphite plant?

Mr. BACKUS. Yes.

Mr. MURRAY. I suppose it consumes as much pulp wood as the paper, the grinding?

Mr. BACKUS. No.

Mr. MURRAY. How would you compare the two?

Mr. BACKUS. It consumes about one-third.

Mr. MURRAY. That is, the sulphite?

Mr. BACKUS. The sulphite one-third and the ground wood two-thirds.

Mr. MURRAY. The sulphite two-thirds of the American mill?

Mr. BACKUS. Of both of them put together.

Mr. MURRAY. And you have another industry there, I believe, that you can use all pulp wood in the manufacture of paper used in building?

Mr. BACKUS. No; that is made out of screenings.

Mr. MURRAY. Pulp screenings from the pulp?

Mr. BACKUS. Yes.

Mr. MURRAY. From the sulphite?

Mr. BACKUS. Sulphite and ground wood.

Mr. MURRAY. You used those?

Mr. BACKUS. Yes.

Mr. MURRAY. You do not throw them into the water?

Mr. BACKUS. No.

Mr. MURRAY. This is a thick paper?

Mr. POWELL. What they put through the screenings is the leavings.

Mr. MURRAY. Yes. As a matter of fact, you could have procured storage room for your pulp wood on the Canadian side if you had expropriated some of this land, or purchased it, could you?

Mr. BACKUS. We could have provided some storage there if we had had money to take a chance on Judge Fitch, who was then in power at that time, and whom we had a warning we had better keep our hands off.

Mr. MURRAY. I think you should keep Judge Fitch out of it.

Mr. BACKUS. We can not, when you put it that way.

Mr. MURRAY. You had provisions under the railway act for arbitration proceedings?

Mr. BACKUS. We had a pretty straight warning, when it came up to the question of expropriating that land, that if we wanted to get burned nicely, go ahead with the expropriation, and we thought we would keep out of it, and so we went and built the mill down in a hole and spent \$50,000 to fill it up, rather than take a chance of expropriating that land with an unfavorable judge on the bench.

Mr. MURRAY. He was not the arbitrator?

Mr. BACKUS. He was to appoint the arbitrator.

Mr. MURRAY. He might appoint a third arbitrator?

Mr. BACKUS. It is the third man that does the business.

Mr. MURRAY. I hope you are not pledging your oath to the fact that that is the reason why you did not—

Mr. BACKUS. It is exactly the reason why; precisely the reason why.

Mr. MURRAY. I am very much surprised; I should not have thought so. You could have access to that land over the C. N. R. tracks—within the land that you might have expropriated—the C. N. R. tracks running down to the limit of your mill?

Mr. BACKUS. Well, that, of course, is a question that we never got to.



Mr. MURRAY. But it could be done?

Mr. BACKUS. Well, I do not know; I am not talking about things I did not try to do.

Mr. MURRAY. There is no physical difficulty in the way, and the C. N. R. have a right of way for a water front as far as Victoria Avenue.

Mr. BACKUS. I have not any doubt that part of it could have been arranged.

Mr. POWELL. You say the C. N. R. have a right of way. Which way?

Mr. BACKUS. Down to Victoria Street. Their track comes down the river front to a point opposite Mowat Street.

Mr. POWELL. See if I have the effect of your examination correctly. Your object is to show Backus or his company could have provided storage in other ways?

Mr. MURRAY. Yes.

Mr. POWELL. And, not having done so, they should not be granted any favors.

Mr. MURRAY. Yes.

Mr. BACKUS. In answer to that, I want to say this: That while that might have taken care of some of the car wood, it would not have taken care of any of the river wood.

Mr. POWELL. I was going to inquire of you in respect to that. If the Canadian Northern has the right to project its line along the frontage there, the result would be that any that came by water would have to be carried over their line? Would it, or would it not?

Mr. BACKUS. They could not go far enough up the river to do us any good, excepting to unload.

Mr. POWELL. That is the only benefit from that?

Mr. BACKUS. That is all.

Mr. POWELL. And it would limit the storage capacity of that to wood that was brought in by rail?

Mr. BACKUS. Yes.

Mr. MURRAY. No difficulty has existed in your acquiring booming privileges from the head of the canal up to the ferry dock shown on the other plan, which is about at the east limit of Mowat—

Mr. BACKUS. Well, we made an application through our solicitor, Mr. George, for booming rights there, and up to date I have not been notified that it has been granted.

Mr. MURRAY. You made an application for booming rights up to Portage Avenue?

Mr. BACKUS. Yes: anything less than that would not be worth putting in.

Mr. MURRAY. There is a very considerable area of the river in between?

Mr. BACKUS. Not at all: you can go clear to the town-hall dock, which is at Portage Avenue, and you would not have more than one day's run with that pulp mill; so that right up to Mowat Street we would not consider enough to change from handling it from through bag booms, as we are now doing.

Mr. MURRAY. As a matter of fact, it is about 400 yards?

Mr. BACKUS. Well, whatever it is, it is not enough to make it worth while.

Mr. TAWNEY. Has the company secured legislative authority for the exercise of the right of eminent domain in respect of the condemnation of that land?

Mr. MURRAY. They did in 1912, but there was a time limit of one year. They were to have taken proceedings in one year, and they did not. There is no doubt about that.

Mr. MAGRATH. How do you estimate the difference in cost, if you were compelled to vacate the river and use land for the storage of wood?

Mr. BACKUS. All kinds of river wood, car wood and all?

Mr. MAGRATH. Yes.

Mr. BACKUS. Well, our experience so far has been that the extra cost amounts to 50 cents a cord.

Mr. MAGRATH. That is what your loss would be if you had to give up some of that space which you now occupy?

Mr. BACKUS. Yes; that is what our experience has been. We might reduce it by putting up expensive haul-pit works, and so on, but so far our experience has been that it costs us about 50 cents a cord extra.

Mr. MAGRATH. In other pulp mills do they not have to have storage land to a very large extent?

Mr. BACKUS. I think they do; yes, and we do, even using all the river; that only takes care of a fraction of our raw material.

Mr. ANDERSON. What is the 50 cents a cord made up of?

Mr. BACKUS. Well, it is made up of taking it off the car and putting it into pile, and then taking it out of the pile again and putting it back into the mill again.

Mr. MAGRATH. It would be a very severe loss to you—because I want to get at that feature—to give up all the river space you now occupy?

Mr. BACKUS. Yes, and, more than that, it would not help the situation any. You would have to pass the material down the river, to get it down to the mills, where you could take it up.

Mr. POWELL. You mean before piling or after?

Mr. BACKUS. Before piling. All the lake wood would have to come down through this place anyway.

Mr. TAWNEY. There is no rail transportation?

Mr. BACKUS. You would not want to stop it at the lower end of the lake and put it on cars and then bring it down and unload it again. You want to bring it straight down.

Mr. TAWNEY. Supposing you had to do that, how much would that increase the cost?

Mr. BACKUS. It would cost very much more.

Mr. TAWNEY. That is the way I understood Mr. Magrath's question. If you had to surrender all your rights in the river below the mouth of the lake down to the mill and transport your pulp wood by rail farther down, or transport it from the woods clear in, handle it, in other words, on cars instead of through water, what would the increased cost be?

Mr. BACKUS. Well, in the first place, it would cost you over 25 cents a cord to load it on cars, and to switch it 25 cents a cord more, and then you would have to take it off the cars and pile it, which would be 50 cents a cord more—well 50 cents above anything I have told you so far.



Mr. ROCKWOOD. How about facilities at Pithers Point for taking out of the water and loading on cars?

Mr. BACKUS. That is impracticable. If you get a boom down there and a storm comes up, you are gone.

Mr. MAGRATH. It always appeared to me that that river is unnecessarily congested. I feel that your industrial activities up there should be encouraged in every possible way, and I think that nothing should stand in the way of development in any country. But I can not make myself believe that the best method of the use of that river has been worked out. Is it not possible to hold these vast quantities of lumber at the outlet, and let them down from time to time, as required? Keep clearly in your mind that I have no desire to interfere with the proper development of industry and put on additional expense, but is it not possible to give a clearer and better channel there?

Mr. BACKUS. In my judgment there is not enough space there from Pithers Point to the dam to do the business; that you will always be obliged to have a congested state of the river, and I think it will be more and more so each year as the industries are enlarged. Take it last spring, for instance, when this high water was on, and when a storm came up from the west, we had a boom of logs, six or seven million feet, in Jackfish Bay, the place where it has always been considered secure. That storm just virtually took that boom up and carried it right out into the main lake, and they were gone, never were picked up.

Mr. POWELL. Did the freshet carry them out?

Mr. BACKUS. The wind, the storm, a veritable hurricane; and that is the safest storage there is, in that Jackfish Bay, and that is more than 7 or 8 miles away now. There have been lots of times up there when you would have two weeks when you could not get the logs down from Jackfish Bay, if your river was clear and you were bringing them in as you were using them. You are never safe till they are inside of Pithers Point.

Mr. ROCKWOOD. Explain why they could not be brought down.

Mr. BACKUS. Because of the wind, the continual west wind.

Mr. POWELL. Is it feasible to have your storage boom just at the foot of the lake, where the exit is, where it runs out—

Mr. BACKUS. No; because there is no protection; there is no harbor there.

Mr. POWELL. That is true; but understand that any gale of wind that would affect the logs would be blowing on shore.

Mr. BACKUS. That is not always true.

Mr. POWELL. Is it not?

Mr. BACKUS. No.

Mr. POWELL. It might be an expensive operation.

Mr. BACKUS. And when it blows on shore it lifts the outside of the boom, so that when it comes down the logs are outside and half of them go.

Mr. POWELL. I would rather think that the wave action there would force the logs on shore.

Mr. BACKUS. Well, in this storm that I am telling you about the boom was tied at the westerly end of Jackfish Bay, right in the cove, and the wind came from the west and picked that boom right up

and lifted it out, and the whole driving crew there could not stop it. They were all there.

Mr. POWELL. And the wind was blowing on shore?

Mr. BACKUS. The wind was blowing offshore.

Mr. MAGRATH. I have an idea that if you had the opportunity of doing about five times the business you are doing, you would do it; and if you were doing it, where would you get your storage?

Mr. BACKUS. We would have to pile more than we are piling now.

Mr. MAGRATH. You could not make use of the water and the lower cost?

Mr. BACKUS. Well, you could not make use of that water in the lake outside above Pithers Point for the storage and hold your logs.

Mr. MIGNAULT. Assuming you had not the right to store your logs in Rainy River, where you store them, what storage ground would you select?

Mr. BACKUS. You would put our sawmill out of business; you would not try it; it could not be done.

Mr. MIGNAULT. Do I understand you to say that you could not devise any other scheme for storing your logs which would allow you to operate your mill?

Mr. BACKUS. Absolutely not. That is the only object we have in building the sawmill on the river. You might as well go into the interior.

Mr. TAWNEY. What is the width of Rainy River from Pithers Point down to the dam—about the average width?

Mr. BACKUS. Well, right below Pithers Point, where the bay makes into the Canadian shore, it must be a full half mile.

Mr. TAWNEY. At that part of the river which is now occupied by this boom, and which it is proposed to continue to occupy, what is the width of the river?

Mr. BACKUS. I should say about 1,000 feet.

Mr. TAWNEY. Your boom, according to this plan, comes to within 10 feet—just look at the plan.

Mr. BACKUS. You are looking down from the Canadian side there.

Mr. POWELL. Whose booming ground is this?

Mr. BACKUS. Shevlin-Clarke. They have three times as much space as we have, and they have none too much, and they have the same capacity of men—I mean the sawmill alone, not the sawmill and two paper mills.

Mr. TAWNEY. Can you state now, with the map before you, what the width of the river is opposite, or in that part which you propose to occupy with this boom, or which is now being occupied by the boom—I mean approximately; I do not care about an inch or half an inch.

Mr. GEORGE. In the company's brief they say the narrowest point between the International Co.'s boom and their boom is 230 feet.

Mr. POWELL. That is left open for navigation?

Mr. GEORGE. Yes; that is the narrowest part of the river.

Mr. TAWNEY. What answer can you give to the question as to the width of the river, or that part of the river in which is located the boom you now have there?

Mr. BACKUS. Well, it is about 1,200 feet in some places, and it runs down to about 800.



Mr. TAWNEY. There is 800 feet of open water?

Mr. BACKUS. Yes.

Mr. TAWNEY. Do your boom and the Shevlin-Clarke boom overlap?

Mr. BACKUS. Do you mean do they lie opposite each other?

Mr. TAWNEY. Yes.

Mr. BACKUS. Yes; in a very small space of the river.

Mr. ANDERSON. If you will refer to our map you will see the exact location of the two booms, the one to the other.

Mr. TAWNEY. I want to get the facts as they exist in the river. I want to ask Mr. Backus a couple of questions based upon his answer to these questions.

Mr. BACKUS. Mr. Langlois might give the space from the end of our boom there down to opposite their boom.

Mr. LANGLOIS. Eight and one-half inches; 34 chains.

Mr. TAWNEY. To what extent are your boom and the Shevlin-Clarke boom opposite each other in the river?

Mr. BACKUS. Two thousand two hundred and sixty-four feet.

Mr. TAWNEY. And the Shevlin-Clarke boom is in that river on the Canadian side?

Mr. BACKUS. Yes.

Mr. TAWNEY. By authority of the Canadian Government?

Mr. BACKUS. Yes.

Mr. TAWNEY. And your boom is on the American side of the river?

Mr. BACKUS. Yes.

Mr. TAWNEY. What is the space between the two booms there—that is, clear open water—for the 2,264 feet?

Mr. LANGLOIS. Four chains.

Mr. POWELL. That is 264 feet.

Mr. TAWNEY. Two hundred and sixty-four feet of open water between your boom and the Shevlin-Clarke boom?

Mr. BACKUS. Yes.

Mr. TAWNEY. If there is any congestion, it is likely to be between the booms, rather than below the booms?

Mr. BACKUS. Yes.

Mr. TAWNEY. The open water below your boom on the Canadian side is more than double the open water between the two booms?

Mr. BACKUS. Yes.

Mr. TAWNEY. Is there any freight and traffic on the Canadian side, any passenger or freight boats—I mean boats carrying freight?

Mr. BACKUS. Yes, freight and passengers.

Mr. TAWNEY. What sized boats are they?

Mr. BACKUS. As a rule, they are gasoline.

Mr. TAWNEY. Boats of any considerable tonnage?

Mr. BACKUS. No, from 30 to 50 feet long.

Mr. TAWNEY. What is their tonnage?

Mr. BACKUS. Perhaps the largest might carry a carload of freight.

Mr. TAWNEY. How many of them are that size?

Mr. BACKUS. I think only one—well, one or two.

Mr. TAWNEY. How many trips does she make a week?

Mr. BACKUS. Well, the trips are very infrequent.

Mr. TAWNEY. How many trips does she make in a month?

Mr. BACKUS. Maybe an average of one in two weeks for the season of navigation.

Mr. TAWNEY. During the navigation season?

Mr. BACKUS. Yes, trips of that kind.

Mr. TAWNEY. And there is only one boat of that kind?

Mr. BACKUS. Not over two.

Mr. TAWNEY. How many gasoline launches are there there?

Mr. BACKUS. I imagine there must be 75 of a size from 30 feet up.

Mr. TAWNEY. Up to what size?

Mr. BACKUS. Up to 60.

Mr. TAWNEY. In that river, below the Falls, there is the Watrous Island boom?

Mr. BACKUS. Yes.

Mr. TAWNEY. How much water is there in the river below the Falls, between your boom and the Canadian shore opposite—I mean in the river below the Falls? Where the Watrous Island boom is located, what is the open water between your boom and the Canadian shore?

Mr. BACKUS. It varies; I should say maybe 500 feet.

Mr. TAWNEY. Is that the narrowest or widest?

Mr. BACKUS. The average.

Mr. TAWNEY. What would be the narrowest point?

Mr. BACKUS. Oh, possibly 100 feet.

Mr. TAWNEY. How does the traffic on the Rainy River below the Falls compare with the traffic above the Falls? How does the extent of navigation below the Falls compare with navigation above?

Mr. BACKUS. It is about the same, but there are more boats above the Falls—pleasure boats.

Mr. TAWNEY. How is it with respect to freight?

Mr. BACKUS. From International Falls to Kettle Falls there is more freight than there is below the Falls.

Mr. TAWNEY. From Fort Francis down to the Lake of the Woods?

Mr. BACKUS. Yes; but that does not apply to the *Aguinda* when she is running. Last year she did not run; but when the *Aguinda* is plying the Rainy River, of course she is a much larger boat than there is above the Falls.

Mr. TAWNEY. The *Aguinda* is a boat of what size, in tonnage?

Mr. BACKUS. I do not know that I can give you that, but Mr. Rockwood or Mr. George might know.

Mr. ROCKWOOD. Mr. Bernard will give it.

Mr. BERNARD. I think she is about 28 or 30 tons.

Mr. BACKUS. If that is the tonnage of the *Aguinda*, I do not think there is any boat above the Falls that would carry half of that.

Mr. TAWNEY. What is the settlement at Kettle Falls that occasions the transportation of freight from International Falls up to Kettle Falls?

Mr. BACKUS. Well, it is the fish business, and, as a rule, the most of that stops at Ranier.

Mr. TAWNEY. Between Ranier and Kettle Falls?

Mr. BACKUS. Yes; it does not come down.

Mr. TAWNEY. The traffic between Ranier and Kettle Falls does not use this part of the river at all?

Mr. BACKUS. Most of the traffic from International Falls to Kettle Falls is, for instance, when we have a logging camp operating on the upper lakes. We unload a carload of freight and put it onto barges, instead of into boats, and tow those barges up to Kettle Falls.



Mr. TAWNEY. Most of this traffic is for——

Mr. BACKUS. Logging camps.

Mr. TAWNEY. Conveying supplies to logging camps?

Mr. BACKUS. Yes; all the heavy traffic is.

Mr. TAWNEY. There is no settlement up there?

Mr. BACKUS. Oh, no.

Mr. TAWNEY. No towns or anything of that kind?

Mr. BACKUS. Not at all. And sometimes we load barges at International Falls, and sometimes we load them at Ranier for that purpose. It is not essential that the river be used from International Falls to Ranier for that purpose.

Mr. TAWNEY. Why?

Mr. BACKUS. Because that freight all comes in by rail, and can be switched over to Ranier, and loaded onto the barges at Ranier in Rainy Lake proper.

Mr. ROCKWOOD. That is speaking of the freight traffic?

Mr. BACKUS. Yes.

Mr. MURRAY. Referring to the traffic on the lower river, the *Aguinda* has not been running for a year or two?

Mr. BACKUS. Well, she did not run last year; prior to that she ran regularly.

Mr. MURRAY. As to Jackfish Bay, I did not understand the location of it. I do not know whether the commission does or not.

Mr. POWELL. It is on the American side.

Mr. MURRAY. Here is a map of the United States Government which shows the different points. Would you not consider it safe booming ground for logs up there?

Mr. BACKUS. Well, we put a boom at the very westerly cove of Jackfish Bay last year, and the storm came along and hurled it right out into the main lake.

Mr. MURRAY. I am told that boom was not tied to cluster piles, or anything of that kind, but was just tied to the shore.

Mr. BACKUS. Yes. Well, when you have to tie a boom of logs to cluster piles to hold it, you may as well turn it loose—better turn it loose.

Mr. MURRAY. Would it not be practicable to drive cluster piles here?

Mr. BACKUS. It would not be possible to store logs in Jackfish Bay for use at International Falls for daily use. It is about enough to have to go in there and leave them in there for a short time when you have everything filled up here.

Mr. GARDNER. What is the distance to Jackfish Bay?

Mr. BACKUS. It is about 8 miles from where you turn through Pithers Point.

Mr. GARDNER. And does that carry you out into open water between the two points?

Mr. BACKUS. Yes. You have to go into the open lake 6 miles of that distance.

Mr. POWELL. Six or eight miles of that distance?

Mr. BACKUS. Yes.

Mr. POWELL. I would not assent to your proposition. It would be dangerous to take it out and tow it along, but it could be stored at Jackfish Bay with absolute security?

Mr. BACKUS. I am talking about wanting a tow of logs to-morrow morning—

Mr. POWELL. You spoke of an enormous wind driving the logs out from under the boom. When you are on the windward shore there they are as safe as they would be boomed in the mill.

Mr. BACKUS. They had a storm there last year where they were not safe.

Mr. POWELL. I guess it was a lack of safety in your boom.

Mr. BACKUS. No; all the booms were the same.

Mr. MURRAY. You bring the great bulk of your pulp wood in by rail?

Mr. BACKUS. Yes: the bulk of it, but there is more and more each year coming by water.

Mr. MURRAY. That is because it is cut up at Rainy Lake point?

Mr. BACKUS. Yes.

Mr. GARDNER. Would Jackfish Bay be available for storage by rail?

Mr. BACKUS. Oh, no.

Mr. GARDNER. So that would be no use except by water?

Mr. BACKUS. No.

Mr. ANDERSON. What proportion of your pulp wood comes in by rail, compared to what comes in by water?

Mr. BACKUS. Well, I should say three-quarters comes in by rail.

Mr. ANDERSON. And that you store in your boom?

Mr. BACKUS. Well, we store that everywhere. We put it in piles and deliver it to the mill dock and take it off the cars and use it and put it on the river bank, and we fill up all the space that is available.

Mr. ANDERSON. What proportion of the pulpwood that you bring in by rail do you dump into the boom?

Mr. BACKUS. Well, I should say, maybe a third of it.

Mr. ANDERSON. Not more?

Mr. BACKUS. I mean the pulpwood and all the logs.

Mr. ANDERSON. What proportion of logs do you bring in by rail?

Mr. BACKUS. About 60 per cent.

Mr. GEORGE. When did you build the paper mill in Fort Frances?

Mr. BACKUS. Beginning in the year 1912, and finished early in 1914.

Mr. GEORGE. And you agreed with the town at that time to build a mill of 100 tons capacity?

Mr. BACKUS. Yes.

Mr. GEORGE. The capacity to-day is what?

Mr. BACKUS. One hundred and forty tons.

Mr. GEORGE. Did you, prior to the erection of the mill, enter into any negotiations with the town, so that you would have proper facilities for storing of pulp wood for use in the Canadian mill?

Mr. BACKUS. Yes, we thought we had that arrangement agreed upon; it was provided for in the contract, at any rate. I have the contract; it is filed [Exhibit B].

Mr. GEORGE. So that there was a difference in the agreement with the town that storage facilities would be provided in the river?

Mr. BACKUS. Yes, sir.

Mr. MURRAY. My learned friend should read it.



Mr. GEORGE. Is that condition contained in clause 3 of the town's covenant, which reads as follows?

That it will recommend to the department of lands, forests, and mines the granting the company of reasonable booming privileges along the shore and in the waters of Rainy River.

Mr. BACKUS. That is the clause.

Mr. GEORGE. Pursuant to that covenant on the part of the town did they approve of booming privileges in the waters of Rainy River?

Mr. BACKUS. I do not understand that they have ever approved of any such arrangement yet.

Mr. GEORGE. Is it not a fact that one council did approve of it, and the succeeding council withdrew the privilege?

Mr. BACKUS. That is true.

Mr. GEORGE. And the matter stands in that position at the present time?

Mr. BACKUS. It does.

Mr. GEORGE. So that condition in this agreement filed by Mr. Murray, as solicitor for the town of Fort Frances, has never been fulfilled by the municipality?

Mr. BACKUS. No, sir; it never has.

Mr. GEORGE. And because they have not fulfilled that condition in the agreement, is it not a fact that you are forced to store the raw material for use in the Fort Frances mill in your boom on the American side?

Mr. BACKUS. Yes.

Mr. GEORGE. In the reply filed by the Dominion Government, and which includes the objections made by the corporation of Fort Frances, it is stated that the approval of this application on behalf of the International Lumber Co. would be of no benefit to Canada. State to the commission what benefit this boom is to Canada in respect to the operation of the Canadian mill. Could the Canadian mill be operated, without the use of that boom at the present time, for storage facilities?

Mr. BACKUS. Not without very extraordinarily heavy expense.

Mr. GEORGE. And was any other method except storage in Rainy River ever contemplated in your negotiations between the town and the company prior to the erection of the mill?

Mr. BACKUS. No, sir.

Mr. MAGRATH. You said that 25 per cent of those booms above the gap were necessary for the Canadian mill?

Mr. BACKUS. Yes, sir.

Mr. GEORGE. Again referring to the agreement between the town and the company, which has been filed, I would draw your attention to paragraph 2 of the company's covenant, in which it is agreed by the company as follows:

That if the bill now pending before the Legislature of the Province of Ontario for the expropriation of a site for the company's paper mill be passed in such form as to enable the company to expropriate the following lands—

Leaving out the description of the lands—

it will proceed to expropriate such lands as it may require for its paper-mill site.

Is it not a fact that the lands to be expropriated, as mentioned in that agreement, were to be exclusively for a paper-mill site?

Mr. BACKUS. Yes.

Mr. GEORGE. And for that reason the right under the statute of Ontario to expropriate was not exercised?

Mr. BACKUS. Yes.

Mr. GEORGE. And, then, notwithstanding that you had the right to expropriate, you did, at a large additional expense, build the mill on another site?

Mr. BACKUS. Yes, sir.

Mr. GEORGE. Now, in the statement in response to the application filed on behalf of the Dominion Government, referring to the last paragraph on page 2, it is stated that the Rainy River is used very extensively for the passage of timber, railway ties, and pulp wood, and it is therefore necessary that a wide channel should be maintained in the center of the stream. Is there any such requirement at the point in Rainy River under discussion, that such use is required for that river or for the channel in the river, other than for the requirements of the applicant company and the Shevlin-Clarke Co.?

Mr. BACKUS. No, sir; none at the present time.

Mr. GEORGE. At any time during the season last past was there any use required of a channel in the center of the stream for the passage of timber, railway ties, or pulp wood for any other company than the two companies?

Mr. BACKUS. No, sir.

Mr. GEORGE. Were any timber, railway ties, or pulp wood carried down that stream beyond the dam and through the passageway provided in the dam for timber for any other company operating the lower river?

Mr. BACKUS. No, sir.

Mr. ANDERSON. I draw attention to the fact that what you are reading from there is a recital by the Dominion Government of the reasons advanced by Fort Frances.

Mr. GEORGE. Yes. I was going to point out to Mr. Anderson that the Dominion Government, in its report, for which I suppose it assumes responsibility, does not go so far as Fort Frances goes, and in that connection I would refer to page 7, wherein the reports of the engineer, S. J. Chapleau, and the chief engineer of the department, E. D. Lafleur, and the second last paragraph of page 7, wherein it is stated that navigation is not materially affected. Is there any reason to believe that the condition existing last year will be altered at that point in Rainy River in future years, in so far as passage of timber over the dam is concerned?

Mr. BACKUS. I do not believe there is; I do not see anything that will require that regulation to be used for the navigation of ties, logs, pulp wood, or other forest products by mills below the dam.

Mr. GEORGE. Will you explain to the commission the reason why the condition which is referred to by the town may have existed some years ago and will not probably exist again?

Mr. BACKUS. Yes, sir. Formerly the Rainy River Lumber Co. operated a sawmill at Rainy River, and they secured their supply



of timber from Rainy Lake and waters tributary to Rainy River; they passed all that material down through the dam and over the falls. That mill has been torn down and abandoned. The Rat Portage Lumber Co. operated plants at Rainy River; those mills have been abandoned—destroyed by fire and not rebuilt; in fact every industry which secured its supply of logs or forest products from Rainy Lake on the lower river has ceased doing business, and therefore, so far as we can see now, the future will not demand any of that material to be put through the dam.

Mr. POWELL. That is, so far as the sawmills are concerned. Is there any other pulp wood consumer in the section there besides yourself?

Mr. BACKUS. No.

Mr. POWELL. Is there enough pulp wood produced, or can enough pulp wood be bought in any of the districts there to support another pulp mill?

Mr. BACKUS. Well, the controlling factor is the water power, and there is no water power below there which would justify it until you get to Kenora.

Mr. POWELL. And you think that is not a practical consideration?

Mr. BACKUS. Not at all. This is entirely a question of the material for the Fort Frances mill and the International Falls paper mill and the Fort Frances sawmill and the International Falls sawmill and the boats.

Mr. POWELL. Do railway ties come down there sometimes?

Mr. BACKUS. No; they are loaded in hoists on Rainy Lake above Pithers Point.

Mr. POWELL. Is there a pier or an artificial harbor there that protects them?

Mr. BACKUS. Well, there are islands where they bring the logs round into bays.

Mr. POWELL. Take advantage of the shelter of the islands?

Mr. BACKUS. Yes.

Mr. GEORGE. So that at the present time ties cut on limits tributary to the waters of Rainy Lake and Rainy River do not go into Rainy Lake there?

Mr. BACKUS. No.

Mr. GEORGE. The two hoists which you mention on Rainy River are adjacent to spur lines of the Canadian Northern Railway?

Mr. BACKUS. Yes.

Mr. GEORGE. And the ties are laid out of the water onto the cars of the C. N. R.?

Mr. BACKUS. Yes.

Mr. GEORGE. And all the companies operating tie camps in that district tributary to Rainy River use the tie hoists?

Mr. BACKUS. Yes.

Mr. POWELL. Is there any possibility of a trade development in lake ties at the point below where these hoists are—meaning at the foot of the lake?

Mr. BACKUS. They are at the foot of the lake.

Mr. POWELL. They are not on any waters crossed by the Canadian Northern Co.?

Mr. BACKUS. No; they are crossed right above the bridge.

Mr. POWELL. And there would be no possibility of a supply of this material coming in below the point where they are moved at the present time by the hoists?

Mr. BACKUS. No.

Mr. GEORGE. Is it the fact that there are ties between this point and the dam?

Mr. BACKUS. No.

Mr. GEORGE. As to the effect on navigation, you have answered inquiries of Mr. Tawney in regard to the width of the navigable stream at certain points. What is the width of the boats operating on the river at this point?

Mr. POWELL. There is no question about it.

Mr. GEORGE. I wanted to show there was sufficient width there at the present time to allow of navigation by any ordinary-sized boats.

Mr. MAGRATH. Those boats vary in width from what to what?

Mr. BACKUS. I think perhaps one there is 20 feet wide.

Mr. GEORGE. That is the largest?

Mr. BACKUS. Yes; and the other may not be over 16 or 18 feet.

Mr. POWELL. That is the greatest beam?

Mr. BACKUS. Yes.

Mr. GEORGE. That is owned by the Shevlin-Clarke Co.?

Mr. BACKUS. Yes; and that is really a tug.

Mr. GEORGE. Outside of the Shevlin-Clarke Co. and the International Lumber Co., are there any interests affected by this boom other than the small pleasure craft that you have mentioned?

Mr. BACKUS. Practically nothing outside of the small pleasure craft.

Mr. GEORGE. Have you, within your recollection, any knowledge of any great congestion in traffic at any point where your boom has been constructed?

Mr. BACKUS. No, sir.

Mr. GEORGE. In answer to a question from one of the commissioners, you spoke of the heavy traffic between International Falls, or Ranier, and Kettle Falls. Who was this traffic for?

Mr. BACKUS. Ninety-five per cent pleasure.

Mr. GEORGE. I am speaking of the heavy traffic-convoying of supplies for lumber camps.

Mr. BACKUS. The International Lumber Co. practically—entirely.

Mr. GEORGE. So that it is the applicant company that is going to be damaged in connection with navigation, if any company will be?

Mr. BACKUS. Certainly. We never before knew there was any interference with navigation. I do not believe anybody else ever did.

Mr. GEORGE. Reference has been made in the town's objection to the granting of the approval of this boom to erosion of the shore on the Canadian side. Are you prepared, Mr. Backus, when the Ontario government states where you can build the dike, to build it?

Mr. BACKUS. Yes.

Mr. GEORGE. And are you not expecting definite word from the minister of lands—

Mr. POWELL. It does not want a dike as much as it wants riprap-ping.

Mr. GEORGE. I presume that will be the method of the construction of the dike. Is it not a matter of fact that the engineer from the department of lands, forests, and mines visited the water front,



and also interviewed the town council during the present month in respect to the construction of the dike?

Mr. BACKUS. Yes, sir.

Mr. GEORGE. And his report, I believe you have been informed by your solicitors in Toronto, is now in the hands of the minister?

Mr. BACKUS. Yes.

Mr. GEORGE. And I think you said in your evidence yesterday that you expected this difficulty of erosion would not be a difficulty after this spring?

Mr. BACKUS. Yes.

Mr. MAGRATH. That is, along the front of the municipality of Fort Frances?

Mr. MAGRATH. Running from the dam to the Shevlin-Clarke mill?

Mr. BACKUS. Yes.

Mr. MAGRATH. Which is the unprotected front of the shore line?

Mr. BACKUS. Yes.

Mr. GARDNER. Are you going to file this?

Mr. GEORGE. We were going to file it, but we have not got it. The minister said, when he read it, he would take action and tell the company on what part of the shore line they would have to construct that dike.

Mr. MIGNAULT. When did you first make that application?

Mr. GEORGE. I first took the matter up with the minister of lands, forests, and mines in the month of June last year, and after some two or three interviews during the summer an engineer was appointed by the minister to go to Fort Frances and decide where the dock should be built and how it was to be constructed. That engineer, when on his way to Fort Frances in the early part of September, was ordered, when he got as far as Sault Ste. Marie, to go to the district of Temiscaming, where there was a large fire, in order to look after relief, and he afterwards took sick, and the Government did not send an engineer until the 8th of January, and the engineer was sent on a special request which I made after a trip to Toronto in the month of December.

Mr. MIGNAULT. Has the engineer reported?

Mr. GEORGE. The engineer has reported to the minister, and the minister stated that his report is in his hands, and he proposes to act upon it immediately; but thus far he has not told us what the recommendations of the engineer are.

Mr. TAWNEY. Do you know the date of the report?

Mr. GEORGE. I know the engineer was in Fort Frances and personally visited the ground and personally went into conference with the town council of Fort Frances on Monday, January 8, of this year, and his report was filed with the minister in Toronto.

Mr. MIGNAULT. You think the report was put in?

Mr. GEORGE. I know the report was put in, for the reason that Mr. Osler asked to get a copy of it from the minister, and that the minister reported to him that he had the report but that until he was prepared to act upon it he did not wish to give it out of his hands. I rather think he wanted to further consult with the engineer as to what form his order should be made in.

Mr. MAGRATH. How did it come that you were dealing with the minister in the matter?

Mr. BACKUS. You mean how it came to be originally?

Mr. MAGRATH. Yes.

Mr. BACKUS. It is provided for in our contract with the provincial government.

Mr. MAGRATH. You are bound under contract with the government to do this work?

Mr. BACKUS. To protect the shore line.

Mr. GEORGE. Furthermore, the land is land which is out of the control of the Province of Ontario, upon which we expect to construct a dike. Of course, it is up to them to say where it shall be constructed. Part of it is mentioned in Exhibit A, in the reply filed by Mr. Rockwood, and referred to in the cross-examination of Mr. Backus by Mr. Murray.

Mr. MAGRATH. And, while you are on that subject, you have some arrangement with the Indian reserve, or the Indian department, for the protection of their shore line, have you not; and you are carrying it out, as I understand it? What I am referring to is, there is certain protection in front of the Indian school up there.

Mr. BACKUS. We contributed a certain amount of money for that protection.

Mr. MAGRATH. Under an agreement with them?

Mr. BACKUS. Yes.

Mr. MAGRATH. And the uncompleted portion——

Mr. BACKUS. No; it is all completed.

Mr. MAGRATH. I was under the impression that was to be carried down throughout the length of the Indian reserve?

Mr. BACKUS. No; it is all done—all that we agreed to do.

Mr. MAGRATH. So that you are not under any obligation to-day with the department of Indian Affairs to do any other protection than what you have done?

Mr. BACKUS. That is my understanding.

Mr. MAGRATH. It is stated in the objections made by Fort Frances that no advantage will accrue to Canada or to the town of Fort Frances from the grant of the proposed booming rights, and only the private interests of the applicant will be served. Aside from the question that these booming rights and storage facilities are absolutely essential to the carrying on of the Fort Frances Pulp & Paper Co.'s undertaking in Fort Frances, is it not a fact that a large number of Canadian citizens residing in the town of Fort Frances find employment in the mills of the International Lumber Co. upon the American side, and also in the allied companies, the Ontario & Minnesota Power Co.?

Mr. BACKUS. Yes.

Mr. MAGRATH. I was going to ask you if you could give us any information as to the number of married men working in these industries on the American side, married men living in Canada, living in Fort Frances, having homes there and paying taxes there?

Mr. BACKUS. I think the average of married men living in Fort Frances and working in the mills on the Minnesota side would be about 100.

Mr. POWELL. Out of your 250?

Mr. BACKUS. That is in addition to the 250. Those all work on the Canadian side, but these are Canadians who walk across and work on the American side.



Mr. POWELL. Altogether, you employ about 300 Canadians?

Mr. BACKUS. I am talking about married men who live in Fort Frances.

Mr. POWELL. You told us there was a total of about 250; you were referring to those employed on the American side?

Mr. BACKUS. No; in the Fort Frances mill.

Mr. POWELL. How many would there be employed in both mills?

Mr. BACKUS. Probably about a thousand.

Mr. POWELL. That would be 250 on the Canadian side and 750 on the American side?

Mr. BACKUS. Yes.

Mr. POWELL. And of that 750, 100 are married men who reside on the Canadian side?

Mr. BACKUS. Yes.

Mr. POWELL. What proportion of those employed on the Canadian side reside in Canada and what proportion in the United State?

Mr. BACKUS. Most all of the 250.

Mr. POWELL. What about the single men?

Mr. GEORGE. We find that the single men reside where they work and the married men reside where their families are, and where they can probably more economically reside.

Mr. BACKUS. As a matter of fact, those two towns are so closely allied, and the access across the river is so convenient, and the employees all have passes, that they do not even discriminate where they live.

Mr. POWELL. Not even as to customs matters?

Mr. BACKUS. No; they consider it as practically all one place.

Mr. POWELL. As a matter of fact, the two mills are connected by an international bridge across the Rainy River for passengers and vehicle traffic and also railway traffic?

Mr. BACKUS. Yes.

Mr. POWELL. And these employees living in Canada and working on the United States side are provided with free passes over this bridge?

Mr. BACKUS. Yes.

Mr. MURRAY. I did not cross-examine Mr. Backus as to the employment of the men in any respect. I was going to ask permission to put in that statement, and ask Mr. Backus if it is not a fact that immigration authorities are to see that not more men than are employed in the Canadian mill go across—a sort of reciprocity?

Mr. BACKUS. I could not answer as to that.

(Adjourned till 2.15 p. m.)

#### AFTER RECESS.

The commission reconvened at 2.30 o'clock p. m.

Mr. GARDNER. Have you anything further to offer, Mr. Murray?

Mr. MURRAY. I have no further cross-examination of Mr. Backus, sir.

Mr. POWELL. On the face of this, Mr. Backus, to use a term which I do not use offensively, you are seeking a monopoly of the whole United States territory that is in the river. The result of that would be to throw all the navigation of the river on the Canadian side.

Now, would not the effect of the navigation of that river be very bad upon the banks in the way of attrition?

Mr. BACKUS. Well, I do not know that I could answer that question with absolute certainty; but, in my opinion, the only reason that the banks are wearing away on the Canadian side below the Shevlin-Clarke mill is because they have never been protected by a boom of logs. If the Canadian Government would give us the right to construct a boom there for pulp wood on the Canadian side, and keep it full of logs, I do not think there would be any erosion on that side.

Mr. POWELL. A filled boom would prevent the wave action?

Mr. BACKUS. Yes, sir.

Mr. POWELL. Let us suppose for a moment that the result of your action would be a continued or increased erosion of the banks. Is your company willing to have a provision made by the commission looking to the protection of these banks at your expense?

Mr. BACKUS. I think our dike matter gets that out of the way also.

Mr. POWELL. Are you limiting yourself to the dike matter, or are you prepared to accept whatever views the commission may have respecting the protection of the banks?

Mr. BACKUS. I do not know anything to the contrary; but when the Government gets to the point of saying you must do thus or so, we have usually felt that it had to be done.

Mr. POWELL. But we are above both Governments in this respect.

Mr. BACKUS. Well, you are the Government.

Mr. POWELL. You will accept gracefully, then, anything we desire to do?

Mr. BACKUS. That is about the situation.

Mr. ANDERSON. When do you bring in most of your pulp wood, Mr. Backus; in the wintertime?

Mr. BACKUS. In the wintertime; yes, sir.

Mr. ANDERSON. Do you bring in any appreciable amount during the summertime?

Mr. BACKUS. Well, the water wood all comes in during the summer.

Mr. ANDERSON. I mean the rail wood.

Mr. BACKUS. The rail wood—I should say one-third of it comes in during the summer.

Mr. GARDNER. That would represent what proportion of the whole? How much comes by water and how much by rail?

Mr. BACKUS. It is hard to say definitely; but from two-thirds to three-quarters is rail wood throughout the year. Of course, each year the amount of water wood increases. There is more wood being put in the water to-day than ever before.

Mr. GARDNER. And that comes in July during the summer season?

Mr. BACKUS. Yes; it comes in entirely during the summer season.

Mr. GARDNER. Have you anything further, Mr. George?

Mr. GEORGE. That is all, sir. I propose now to call Mr. Bernard.

Mr. GARDNER. Is there anyone else present who wishes to ask any questions of Mr. Backus?

Mr. LENANDER. I would like to ask Mr. Backus some questions. I noticed that during the hearing here the question of taking pulp wood out to the proposed permanent boom in sack booms has been talked of. Last summer, during the months of July and August, we found a number of times that these booms would be moored for days at a time on the outside of the permanent line of cluster piling, and this



would throw them out directly in the channel of navigation entirely in Canadian waters; and at such times, with other logs floating down, the channel boats would be held up for hours at a time. At least on two different occasions there was a considerable blockade, and we were at times unable to make the train on account of these small booms, say, 100 or 200 feet across, being tied to the outside of this permanent line of booms.

Now, I do not wish to raise any objection at all to the proposed improvement. I do not want to act the part of the dog in the manger or anything of that kind. Mr. Backus has large interests there and is entitled to all the consideration possible, but in arriving at a final determination, I think that if possible a determination should be reached whereby the boom should not be permanently or temporarily tied to the outside of this line of piling right in the channel of navigation.

Mr. TAWNEY. Were you prevented from getting up or down the river by reason of these sack booms being anchored?

Mr. LENANDER. Yes, sir; for hours at a time, and at one time our boat was practically crushed in a log jam immediately opposite one of these booms. Last summer there was a very strong current at all times.

Mr. TAWNEY. Do you want to ask Mr. Backus some questions with regard to that?

Mr. LENANDER. I want to inquire if it is the intention to anchor loose booms in the future to the outside of this proposed permanent line of pilings, because, in that event, the channel naturally being narrow, a boom anchored there would practically close the channel.

Mr. BACKUS. May I ask you a question, Mr. Lenander?

Mr. LENANDER. Certainly.

Mr. BACKUS. At what part of the river did this occur?

Mr. LENANDER. Just a trifle below the Shevlin-Clarke mill. The map shows a projection of piling out into the Canadian side.

Mr. BACKUS. Perhaps you do not know that during the flood water, part of this same commission was at the Falls, and ways and means were discussed as to how the situation should be handled to keep the logs, pulp wood, etc., from breaking loose up there in that part of the river just at that time and going down onto the railroad bridge and from there down onto the dam. Now, this boom, as it is laid out here, is so arranged that there could be no obstruction in between the Shevlin-Clarke boom and our boom. It must have been that the Shevlin-Clarke people were bringing some logs down to put at the lower side of their mill when that occurred. It could not have been because this outlet here is below where there is any narrowness in the river.

Mr. TAWNEY. In other words, no logs can get out of your boom opposite the Shevlin-Clarke Co.'s boom?

Mr. BACKUS. Not at all.

Mr. LENANDER. It is below the Shevlin-Clarke Co.'s mill. Your boom was moored to these pilings right here [indicating]. It was approximately opposite Mosher Street, at Fort Frances.

Mr. BACKUS. Mr. Lenander, I think you are mistaken. I think what you are talking about is that, in getting the material away from the dam at the time Mr. Tawney and Mr. Magrath were there,

tugs of all kinds were taking down this material picked up here and towing it up the river. That was when it was coming up, not simply the bag boom that was tied at the pier, where it projects into the Canadian channel; because there never was a boom big enough to close that channel that comes out of there. Are you not confused? Is it not a fact that this was material being brought back here, logs belonging to the Shevlin-Clarke mill, during the crisis of that high water?

Mr. LEXANDER. No; this was during July. The commission committee was there from the 24th of May to the 1st or 2d of June.

Mr. BACKUS. It was just as high in the middle of July.

Mr. LEXANDER. The crest of the water was just about the 17th of June, because I was there and had a private water gauge, and we took our own readings, but, of course, that is not before the commission now. We were told that the booms were tied here for days. I raised an objection down at the docks. I said, "What is the matter with those booms? There is one that has been tied there for several days." Some one said, "Well, there are no lights on it, and navigation is not protected in any way." Later on I heard that some one had deliberately cut the cables and let the boom float on down.

Mr. BACKUS. I am sure that there never was a boom brought out from the inside of the boom here that was large enough to close that river at that point. There are boatmen in this room who were plying that river two or three times a day, and if they say it was closed I will withdraw my statement.

Mr. LEXANDER. I do not want to make that a point before the commission. But would it not be agreeable to all people concerned to see that there are no booms tied for any length of time in the future opposite this line?

Mr. BACKUS. How are you going to do it, except to fill the boom and then move it after it is filled?

Mr. LEXANDER. I think your gap here should be of sufficient size so that you can take that boom right out of there.

Mr. BACKUS. Then you can not hold anything inside of it. If the opening is big enough so you can take a boom out, the loose material will go out there.

Mr. LEXANDER. You might have wings on here [indicating]. Some arrangement should be made so that the channel will not be obstructed in the future.

Mr. BACKUS. Did you ever get caught under the Ranier Bridge?

Mr. LEXANDER. Yes, sir; I have.

Mr. BACKUS. You know that is one of the little things of business. I have been caught all night and had to lie up in a boat all night because the Shevlin-Clarke Co.'s boom was on the outside. Did anybody ever hear me complain?

Mr. LEXANDER. No; I do not think you should complain, because I really believe that it was the very fact that there was a jam of logs against the bridge that saved your mill.

Mr. BACKUS. I am talking about any time. You can go up there and find the Shevlin-Clarke people bringing their logs under the Ranier bridge, and you have to wait six or eight hours to get through. We never complain, because we know that that is in the course of natural business.



Mr. LEXANDER. The jam I have reference to saved the town of Fort Frances and your mill, because if the water had been allowed to come down here you would have had a great deal more of suction than you did.

Mr. BACKUS. The only suction you got was what was produced by the water passing through the waste gates.

Mr. LEXANDER. The water passage was practically stopped at the Canadian Northern Railway Bridge except under the main draw.

Mr. BACKUS. I hope you will tell that story broadcast, so they will sue the Canadian Northern Railway for holding the water back on the lakes instead of us.

Mr. LEXANDER. That is really the only point that I desire to make before the commission here, that the channel that is proposed to be left in the river itself should be maintained free from obstructions, whether they be in the nature of temporary sack booms, as they are called, or not, because there have been sack booms tied outside of the permanent line of pilings, as they are shown on this map, for several days at a time.

Mr. BACKUS. There never has been any boom there under the control of the International Lumber Co. that has interfered with that passage.

Mr. LEXANDER. It interfered with us.

Mr. BACKUS. You do not know whose it was. As I say, there were millions of logs going back to the Shevlin-Clarke mill that got away last spring and got down on the dam.

Mr. MIGNAULT. Would they tie them to your boom, Mr. Backus?

Mr. BACKUS. Yes, sir; they would tie them anywhere they could when night overtook them.

Mr. LEXANDER. This boom in particular was filled with pulp logs.

Mr. BACKUS. Pulp logs only were concerned, Mr. Lenander.

Mr. LEXANDER. Then there can be no question as to whose boom it was. There have been logs of the Shevlin-Clarke Co.'s mill obstructing navigation.

Mr. BACKUS. Remember that everything down here was mixed, and when those logs went back they all went back to the Shevlin-Clarke boom, and the saw logs were taken out of them and the pulp logs brought back.

Mr. LEXANDER. This boom in question was moored at the point I pointed out, opposite Mosher Street, for several days. It was not being brought up; it was being held there permanently.

Mr. BACKUS. There never was a boom there that came out of that inside boom that interfered in the slightest with navigation. You have boatmen here who saw that river every day constantly; and if they say any boom came out of that place which interfered with navigation of the river at that point, it is something I do not know about.

Mr. LEXANDER. The point I want to make is that protection should be made for the future. I do not care anything about last year; that is all past and gone.

Mr. BACKUS. You can not turn the logs out loose there to go to the mills below, because then you are in trouble. Until you get a sack boom there so it can be towed down you can not start away with it. If you turn the logs out loose, every boat is running into the logs all the time.

Mr. GARDNER. About how long does it take you to make up a boom of that kind, ordinarily?

Mr. BACKUS. Two or three hours, as a rule.

Mr. MIGNAULT. You will concede that navigation should not be interrupted?

Mr. BACKUS. I certainly do.

Mr. POWELL. How do you get your logs dropped down from those storage booms?

Mr. BACKUS. We put them into a bag boom and tow them around.

Mr. POWELL. Could you not have a lane down there set off some 10 or 15 feet wide and run them down in that way?

Mr. BACKUS. You would have to cross the river with it. If we could run a boom along the Canadian shore so that all we would have to do would be to turn them into the river, it would be a simple matter; but we never have been granted that right yet.

Mr. LENAXDER. If you used the American side as your storage pond or storage basin for logs, you would have to take them across the navigable channel. Even if you had the entire Canadian side for a chute, as Commissioner Powell suggested, you could not get them across without taking the logs across the navigable channel.

Mr. BACKUS. That is true.

Mr. LENAXDER. If the channel is narrowed down to the proposed width, I think it will be very narrow then.

Mr. BACKUS. It is just as it has always been.

Mr. LENAXDER. You are asking for permission to parallel the proposed boundary within 10 feet, which would leave only 10 feet on the American side.

Mr. BACKUS. That is true. That is where it is now.

Mr. LENAXDER. I do not think it is fair to compel our Canadian friends to allow passageway for all of his people here. Suppose some industry arises here that would necessitate this commission allowing some privileges on the Canadian side within 10 feet of the proposed international boundary. We will have a lane only 20 feet wide, which would let some of the boats through, but which would never allow any boats to meet and pass in that stretch.

Mr. BACKUS. You are very fortunate that you never got up under Ranier Bridge and had to wait there all night.

Mr. LENAXDER. We used to do all our trading and travel to and from International Falls, and we had to discontinue that and trade in a little Indian store at Ranier. We got out of the habit of going down there on account of the difficulty. The boatmen may be more skillful about dodging logs, but personally I am not enough of a water rat. However, I would like to have enough space for my little craft.

Mr. POWELL. Mr. Backus, take the lower end of your boom—that is, the end next to your mill—why not do your rafting into your loose boom, your bag boom, instead of alongside the main boom?

Mr. BACKUS. The Canadian Government is requiring us to pile wood of Canadian origin by itself.

Mr. POWELL. But that is on the American side.

Mr. BACKUS. On the American side; yes, sir.

Mr. POWELL. That is done in order that you may get the quantity of pulp wood that comes off Canadian soil.

Mr. BACKUS. Yes.



Mr. MURRAY. Where is your place, Mr. Lenander?

Mr. LENANDER. We are about 32 miles above International Falls in what is known as Saginaw Bay.

Mr. MURRAY. You are on the Minnesota side?

Mr. LENANDER. Yes; we are on the Minnesota side and, of course, we trade on the Minnesota side so as to have no complications with the customs authorities.

Mr. BACKUS. As I understand it, Mr. Lenander, the main point you are making is that you were delayed here and missed your train?

Mr. LENANDER. A number of times we have been delayed.

Mr. BACKUS. You could have gotten off at Ranier and gone to the Falls by automobile or street railway.

Mr. Lenander. Yes; we might have done that.

Mr. BACKUS. You are just a tourist.

Mr. LENANDER. I do not know that I would exactly be called a tourist. We have lived on the lake almost since you started your operations.

Mr. BACKUS. Well, I mean you have a summer cottage?

Mr. LENANDER. Yes; we live there until the ice goes out and comes in again.

Mr. GARDNER. Were you delayed in consequence of this section of the river between these booms being congested?

Mr. LENANDER. Yes, sir; right opposite the outlet for Mr. Backus's pulp logs. That is really the seat of trouble. Very often between the booms here and the Shevlin-Clarke Co.'s mill there is a congestion, not always of pulp logs but other logs. The channel that is allowed for navigation is entirely too narrow between the booms of the International Lumber Co. or the power company and the permanent boom logs of the Shevlin-Clarke Co.

Mr. MAGRATH. What is the difference between the Shevlin-Clarke Co.'s boom and the company's boom as shown on that blue print you have, Mr. Murray?

Mr. MURRAY. The Government engineers put it at 175 feet.

Mr. POWELL. That is the lane for the channel?

Mr. MURRAY. That is the lane as it exists at the present time.

Mr. MAGRATH. That is the narrowest point?

Mr. MURRAY. That is the narrowest point.

Mr. POWELL. Mr. Backus, you spoke of the requirements of the Canadian Government that the wood be piled separately for the purpose of getting the quantities. Did your statement refer only to the wood that is in the pile or also to other wood that is put there promiscuously?

Mr. BACKUS. They require that it be kept separate and delivered to the Canadian mills separately.

Mr. ANDERSON. Is it delivered by rail or boom?

Mr. BACKUS. By bag boom.

Mr. POWELL. And you store it to obviate the necessity of sorting the logs and then remove it en bloc.

Mr. BACKUS. Yes.

Mr. MAGRATH. Mr. Lenander, do you complain of the congestion between the two booms?

Mr. LENANDER. Yes, sir; the loose boom tied to the other boom about opposite a certain street here which is named.

Mr. MAGRATH. That is at the outlet of your boom, Mr. Backus.

Mr. LENAXDER. At the particular time when we came near being crushed we were directly opposite the Shevlin-Clarke mill and the permanent line of pilings here of the International Lumber Co.

Mr. MAGRATH. Which way were those logs supposed to be proceeding?

Mr. LENAXDER. They were going up. We were going home. Coming up here [indicating on the map] we waited a long time. Six or eight boats were up in here trying to come down, and there were two or three more waiting to go up. We thought the line of logs would be sufficiently loose so that they could be crowded together in order that we could get through. It looked stormy and we had 25 miles to go and we were anxious to get back.

Mr. MAGRATH. When was that?

Mr. LENAXDER. About the 12th or the 15th of July of last summer.

Mr. MAGRATH. And those logs, you say, were coming up?

Mr. LENAXDER. We were coming up, and the logs were all going down.

Mr. TAWNEY. Were they loose or in booms?

Mr. LENAXDER. They were in booms, because there were 30 or 40 foot boom logs on either side of us.

Mr. TAWNEY. Your objection is more to the regulation than to the permanent structure?

Mr. LENAXDER. I would not want to curtail Mr. Backus's rights for a moment, because he is in business, and we are there for pleasure. I think pleasure should take second choice.

Mr. TAWNEY. Your objection could be overcome by some system of regulation, could it not?

Mr. LENAXDER. I think it could very easily. Mr. Backus said I objected because I missed a train. That is not exactly the way to state it. There are hundreds of tourists who own property on the lake there that are in the same boat exactly that we are. I do not want the impression to go before the commissioners that we are the only ones on the lake. If I were the only one on the lake raising this objection, I would not say a word about it; I would start at Ranier and walk down.

Mr. TAWNEY. Can you give us any idea as to what the summer population of Rainy Lake is?

Mr. LENAXDER. I can give you an idea of the population on the American side. There are perhaps 30 or 40 permanent cottages on the American side, and they have more than doubled every year in the last four years. In 1910, when we built, we were practically the only ones up there. Dr. Dunsmore was our nearest neighbor on the Canadian side, and we were about 25 miles apart. Now we have a number of neighbors, and there are more coming in.

Mr. TAWNEY. You do not know how many there are on the Canadian side?

Mr. LENAXDER. Well, there are many more on the Canadian side than on the American side; maybe eight or ten times as many as there are on the American side.

Mr. TAWNEY. Do you think you are correct in that statement, that there are eight or ten times as many on the Canadian side as there are on the American side?

Mr. LENAXDER. Yes; I believe so.



Mr. TAWNEY. You say that there are about 40 on the American side?

Mr. LENANDER. Yes; I think there are that many.

Mr. TAWNEY. Then, there would be about 320 on the Canadian side.

Mr. LENANDER. That may be slightly overdrawn. But if you take the Kettle Falls trade into consideration, and that of Namakan and Kabetogama above there, I would say that there are as many on the American side as on the Canadian side. I merely had in view our neighborhood from the town out.

Mr. POWELL. Mr. Lenander, will you please look at this plan here? The space between the boom on the American side and the bank on the Canadian side is about 500 feet.

Mr. LENANDER. Yes.

Mr. POWELL. What objection would there be to having this loop boom filled with logs there, Mr. Backus?

Mr. BACKUS. That is where it is.

Mr. POWELL. At the wide portion?

Mr. BACKUS. Surely.

Mr. POWELL. Is there good navigation in close to this bank?

Mr. BACKUS. Certainly.

Mr. POWELL. The same as there is out farther?

Mr. BACKUS. Yes; I never saw a time, excepting when we were bringing logs up here, getting them away from the dam, that there was any interference there.

Mr. LENANDER. These are permanent or stationary piling here [indicating], are they not?

Mr. BACKUS. Yes.

Mr. LENANDER. Is it not a fact that practically all the time during the summer there are sack booms of large dimensions down here containing logs?

Mr. BACKUS. For the Shevlin-Clarke mill?

Mr. LENANDER. Yes.

Mr. BACKUS. Yes; those are logs belonging to the Shevlin-Clarke Co.

Mr. LENANDER. I know they are, but the point I want to make is that this boom here on the Canadian side would conflict with this loose boom that you have occasionally on this side.

Mr. BACKUS. This represents the loose boom. They do not come down any farther than that.

Mr. LENANDER. I do not understand how a boom without permanent fastenings can take on a shape like that.

Mr. BACKUS. That is only blocked out as a sort of sketch. It runs down to about Butler Street, below the mill.

Mr. POWELL. It does strike me that there would be room enough there for the loose booming of logs.

Mr. BACKUS. Mr. Powell, there was a lot of trouble last summer and logs kept drifting away from under the booms with the high water, and they kept taking them up and storing them and tying them to the shore everywhere they could. Part of them were the Shevlin-Clarke Co.'s and part were ours. There may have been a time during that period when they got so much stuff up in here that there was congestion, but when the river operations are normal there

never is a time when that bag boom affects it a particle. There are boatmen in this room who will tell you so.

Mr. POWELL. My recollection agrees with your statement, but one can not depend upon a casual observation.

Mr. MURRAY. I want to draw attention to the fact that that map does not show really where the actual boom is. This map of the Dominion Government does show that.

Mr. POWELL. Mr. Lenander, you say that Mr. Backus at the present time is enlarging the capacity of his mills by new construction at the Falls. The result of that will be that more lumber will be required to be stored in the boom than at present, and the tendency will be to increase the congestion. That is correct, is it not?

Mr. LENANDER. Yes.

Mr. POWELL. Mr. Backus says in reply to the statement that he does not agree with that. He states that he is building the new mills, but he claims that the congestion of logs will not be increased.

Mr. BACKUS. Will not be increased materially.

Mr. POWELL. Mr. George, is this plan in evidence?

Mr. ANDERSON. It was handed in but has not been proved yet. I have an engineer by whom I expect to prove the plan.

Mr. GEORGE. This is a part of the reply of the Dominion Government, and accompanied their brief as filed.

Mr. POWELL. Is it sufficiently correct for you to put it in evidence?

Mr. GEORGE. It has already been admitted by Mr. Backus as sufficient.

(The plan above referred to was received in evidence and marked "Exhibit D.")

Mr. POWELL. Mr. Backus, on this plan which is marked "Exhibit D" I see three piles in succession at the lower end of the sawmill boom on the Canadian side. What are those there for?

Mr. BACKUS. They are there to maintain a reserve storage of logs for the Shevlin-Clarke mill.

Mr. POWELL. In what way do they act?

Mr. BACKUS. They bring the boom down and turn it back into this temporary boom.

Mr. MAGRATH. Could they not still do that without these extra two piles projecting out into the river?

Mr. BACKUS. That I could not say. I never examined their works at all.

Mr. CLAPP. I am here representing the Shevlin-Clarke Co., but I can not speak on that point.

Mr. BACKUS. I think the arrangement there is all right and nobody ought to complain of it.

Mr. POWELL. This being a loose boom for a couple of thousand feet and not attached to piers, it would have a tendency to bulge out and that bulging would narrow the stream at that particular point.

Mr. LENANDER. Yes; it narrows it down to nothing, practically.

Mr. POWELL. Mr. Backus, that would not be your funeral.

Mr. BACKUS. No; but, Mr. Powell, you realize that in the conduct of their business they have certain rights in the river. I have waited three or four hours at a time to get up the river on account of Shevlin's logs. Nobody ever heard a single complaint from me. I know what it means to conduct business, and I think that the ar-



rangement there is pretty nearly a necessity the way they have it. I was not asked to defend their situation at all, but I am explaining to you what I think is the real situation.

Mr. POWELL. The free navigation of the river, like the free use of a road, is not absolute; it implies the rights of individuals and it may be necessary for you to stop your horses and get to one side and let another pass. That is not only custom: it is implied in law.

Mr. BACKUS. Mr. Lenander is discussing a situation that would not happen once, probably, in two or three years. Those were high-water or flood-water conditions. It was simply a question of how to get that material back to the Shevlin-Clarke Co.'s mill.

Mr. POWELL. As I understand you, Mr. Backus, the result of the flood last year was to cause the logs to break away from the boom above and to form a jam at the dam at the mill.

Mr. BACKUS. Yes, sir.

Mr. POWELL. And in order to prevent their going over the waste ways and carrying away the property of the company you had to break the jam and get the stuff back upstream?

Mr. BACKUS. We had to tow it up.

Mr. POWELL. And that is very exceptional?

Mr. BACKUS. That is very exceptional.

Mr. POWELL. How long before that had you ever had a jam?

Mr. BACKUS. You might say never. We never had anything like that occur before in all the years we have operated there.

Mr. POWELL. Under the terms of the treaty we are obliged, Mr. Backus, to make paramount the rights of navigation.

Mr. BACKUS. That is true.

Mr. POWELL. The power rights and manufacturing rights are subsidiary or secondary rights.

Mr. ANDERSON. Mr. Langlois, the engineer who actually made the surveys, is here and perhaps he can tell you something about it.

Mr. MIGNAULT. If Mr. Backus has finished, should we not then find out whether Mr. Rockwood or Mr. George has any evidence to put in, and then the representatives of Fort Frances could state their case. It seems to me we are proceeding rather irregularly.

Mr. ANDERSON. I think Commissioner Powell was not here when you produced your plan yesterday, Mr. Backus. The object of your present application, as I understand it, is to straighten your boom so as to make it conform practically to the international boundary line?

Mr. BACKUS. I can answer your question better by referring to this plan which is marked "Exhibit D." It shows that in three places the piling is outside of the boundary line.

Mr. ANDERSON. Exactly.

Mr. BACKUS. It runs into the Canadian boundary, and Maj. Peek, or rather one of our trouble makers in International Falls, reported to the War Department that——

Mr. ANDERSON. Well, you need not go over that: that was all gone over yesterday.

Mr. BACKUS. Well, Mr. Powell was not here then. It was reported to the War Department that the present piling stood out farther than the plan approved by the War Department. Maj. Peek made a suggestion that we make a survey, which we did, and gave it to him.

Then he prepared this plan to be filed, and said the War Department would approve it so far as the territory lay within the United States.

Mr. POWELL. And on this plan he drew these salients?

Mr. BACKUS. He said where they are outside.

Mr. ANDERSON. That is just the point I was coming to. Your plan, Exhibit D, does not show that. Your plan shows that the whole line is straightened out, and it all corresponds to the international boundary line. In other words, where you are within the American boundary now you have moved up to the boundary line, if this plan, Exhibit E, is correct. That is just the point I want to get straightened out.

Mr. BACKUS. Maybe I can answer the inquiry of Mr. Powell in this way: What we would like to do is to leave the boom just where it has been.

Mr. ANDERSON. That is not the point. There is an application pending before this commission, and the plan filed in support of that application is this Exhibit E. I want to know whether or not it correctly shows the boom as you propose to reconstruct it?

Mr. BACKUS. That is the boom as recommended by Maj. Peek.

Mr. ANDERSON. Well, is it as you propose to reconstruct it?

Mr. BACKUS. Well, that is what it means, if it is reconstructed.

Mr. TAWNEY. In what respect would it differ from the boom as it now exists, if constructed under the plan Exhibit E?

Mr. BACKUS. We did not intend to reconstruct it at any place except where it went over the boundary, to cut out where it goes across the boundary.

Mr. ANDERSON. Then Exhibit E is not correct.

Mr. BACKUS. That gives us the right to do it. We might construct it at some other time.

Mr. ANDERSON. That is what I want to know, because you are asking the commission to approve this particular plan. We want to know what it means, if the commission approves it. If your reconstruction is carried out according to the plan marked "Exhibit E," you would not be reducing the area of your boom, would you?

Mr. BACKUS. I could not say.

Mr. ANDERSON. It was suggested by you yesterday that the reconstructed plan would cover a smaller area and be a smaller boom. Now, if your plan is correct, Exhibit E is not; and if Exhibit D is correct—and I expect it is and am going to try to prove that it is—then your plan is not correct.

Mr. BACKUS. I think you are wrong.

Mr. ANDERSON. I suggest to the commission that it would be well to know of what Mr. Backus is going to get the approval of the commission.

Mr. TAWNEY. He will get the approval of the construction according to the plans filed.

Mr. BACKUS. That would leave it as it is now.

Mr. TAWNEY. If the boom is reconstructed according to Exhibit D, in what respect will the reconstructed boom differ from the boom as it now exists in the river? Will the only difference be the straightening out or the removal entirely of the boom from Canadian waters across the line into the United States waters?



Mr. BACKUS. That is what I told Maj. Peek we wanted to do. If he has constructed it some other way because he wanted it some other way, I do not know about it.

Mr. TAWNEY. That is the plan which the Secretary of War has approved. [Exhibit E.]

Mr. ANDERSON. Subject to the approval of this commission.

Mr. TAWNEY. There is no qualification as to his approval, except that he says that because of the proximity of the boom to the international boundary line they advise the State Department to refer this to the commission.

Mr. ANDERSON. And the final approval is withheld until the commission reports.

Mr. TAWNEY. I do not think it is an unqualified approval. "Approved as recommended by the Chief of Engineers, and respectfully referred to the honorable Secretary of War for submission to the International Joint Commission for its consideration."

Mr. ANDERSON. I think there is another tag to it.

Mr. TAWNEY. That is the last. August 7, 1916, is the last date. In another part of the correspondence it says that the Chief of Engineers recommends to the Secretary of War that on account of the proximity of the proposed boom, or the booms of the International Power Co., that it be referred to the International Joint Commission. Here is the last—"Approved as recommended by the Chief of engineers," and so forth, "August 17, 1916." This is the map that goes with this correspondence, Exhibit E.

Mr. WYVELL. That is the plan Maj. Peek approves.

Mr. TAWNEY. Yes. That was prepared in the War Department.

Mr. WYVELL. Yes.

Mr. POWELL. If Mr. Chapleau, on behalf of the Dominion, and your engineer will go to work and, taking into account the difference in the scale, plot the line approved as the line your boom will follow on D, we will have the two before us, and it will help to clarify the situation. That could be done to-night.

Mr. TAWNEY. We have here to-day Maj. Burgess, of Detroit, who succeeds Col. Patrick and Lieut. Col. E. H. Schulz.

Mr. POWELL. Is it understood that the two engineers plot out upon Exhibit D, as suggested?

Mr. GARDNER. Yes.

Mr. GEORGE. I had intended calling a witness from International Falls, who wants to get away to-night, on the question of navigation.

Mr. TAWNEY. We can hear that independently of this.

#### TESTIMONY OF MR. A. BERNARD, OF INTERNATIONAL FALLS.

Mr. A. BERNARD, of International Falls, having been duly sworn, testified as follows:

Mr. TAWNEY. You live at International Falls?

Mr. BERNARD. Yes.

Mr. GEORGE. And you are a boat owner and navigator in the waters of Rainy River and Rainy Lake?

Mr. BERNARD. Yes.

Mr. GEORGE. How many years have you been engaged in navigating these waters?

Mr. BERNARD. Nine years.

Mr. GEORGE. What kind of boat do you operate in these waters, or have you operated?

Mr. BERNARD. At present I have a 40-foot launch.

Mr. GEORGE. And are there any two points that you operate between?

Mr. BERNARD. No; I am open for engagements at any part of the lake, principally on the American side.

Mr. POWELL. You are a rover?

Mr. BERNARD. Yes.

Mr. GEORGE. How many freight boats are there operating in Rainy Lake between the dam of the Minnesota & Ontario Power Co. and Rainy Lake?

Mr. BERNARD. On the American side there are two boats that ply between Kettle Falls and International Falls twice a week.

Mr. GEORGE. Those are two freight boats?

Mr. BERNARD. Freight and passengers.

Mr. GEORGE. What are the sizes of the other boats that operate?

Mr. BERNARD. Twelve to fifteen tons net.

Mr. POWELL. How much beam?

Mr. BERNARD. One is about 13 feet and the other about 10.

Mr. POWELL. You could put 10 or 12 in the channel abreast?

Mr. BERNARD. Yes.

Mr. GEORGE. In addition to these two freighters, what other boats are there that navigate in these waters for hire? That is, exclusive of small pleasure craft?

Mr. BERNARD. On the American side there are about 12, and on the Canadian side I believe there are about 6 for hire.

Mr. GEORGE. That would be about 18 in all for hire in these waters?

Mr. BERNARD. Yes.

Mr. GEORGE. And the freight boats run between International Falls and Kettle Falls, with freight, I believe, for fishermen and logging camps?

Mr. BERNARD. Fishermen principally.

Mr. GEORGE. And do they take back freight to International Falls?

Mr. BERNARD. Fish.

Mr. GEORGE. But the fish they only take back as far as Ranier?

Mr. BERNARD. Sometimes; sometimes only they take a load back to International Falls, but it is mostly shipped on the Canadian Northern from Ranier.

Mr. GEORGE. So that, in addition to the 2 freighters the 12 boats that are for hire at International Falls, and 6 boats operating on the Canadian side for hire, there remains only the gasoline pleasure craft?

Mr. BERNARD. Some towboats on the Canadian side, alligators.

Mr. GEORGE. Used by lumber companies?

Mr. BERNARD. Yes.

Mr. GEORGE. The Shevlin-Clarke Lumber Co.?

Mr. BERNARD. On the Canadian side.

Mr. GEORGE. And on the American side?

Mr. BERNARD. The International Lumber Co.

Mr. GEORGE. Take a look at this map, Exhibit E, and you will note on this map where the city dock at International Falls is?



Mr. BERNARD. Yes.

Mr. GEORGE. And I assume that you can see the usual route taken by yourself with your boats going up the river?

Mr. BERNARD. Yes.

Mr. GEORGE. Have you ever experienced any difficulty in navigating that part of Rainy River in front of the International Lumber Co.'s boom, as it is shown on this Exhibit E?

Mr. BERNARD. Yes; I have.

Mr. GEORGE. What difficulty?

Mr. BERNARD. In towing logs down sometimes from the boom where they are gathered into the bag boom——

Mr. TAWNEY. The sack boom?

Mr. BERNARD. Yes.

Mr. TAWNEY. Where?

Mr. BERNARD. On the American side.

Mr. POWELL. At the foot of whose mill?

Mr. BERNARD. At the foot of the Canadian mill; on the American side it naturally fills the river almost completely.

Mr. POWELL. That is the sack boom itself?

Mr. BERNARD. Yes. It only takes about 15 minutes to tow it down from where it is gathered to the mill, and it might obstruct the river for that time, 15 minutes possibly.

Mr. POWELL. Have you experienced difficulty that caused you to make any complaint as to navigation at that point?

Mr. BERNARD. No, I have not; not lately; not the last couple of years.

Mr. POWELL. And the only temporary difficulty, lasting a matter of 15 minutes, would be in towing the sack boom of pulp wood over to the Canadian mill?

Mr. BERNARD. Yes.

Mr. MAGRATH. Is that towing always done in daylight?

Mr. BERNARD. Altogether in daylight. I have seen the rafts being gathered on the American side. I have seen a very strong south wind going over to the Canadian side, and being held in that way for some little time, but the International Lumber Co.'s men being notified, they generally get up there and haul it in and tie it up. Sometimes the bindings will break; that is, with a strong west or south wind.

Mr. MAGRATH. Would you say there is any undue congestion or obstruction to navigation at that point as the boom exists now?

Mr. BERNARD. No; I would not.

Mr. TAWNEY. What have you to say as to the quantity of loose logs that run down there and their effect upon navigation?

Mr. BERNARD. We can dodge them when we see them.

Mr. TAWNEY. Are they very numerous?

Mr. BERNARD. Sometimes there are quite a few.

Mr. TAWNEY. Are they the logs that go across the boom and down to the lumber mills below on Rainy River?

Mr. BERNARD. No; the biggest part of these logs come from the Canadian side, from the Shevlin-Clarke mill. They seem to get away from the boom and come down. Also the Shevlin-Clarke people get most of their logs from the lakes down—I should judge

75 per cent of the logs—and when they get above the bridge at Ranier they let them loose and let the logs take care of themselves.

Mr. POWELL. Go down with the current?

Mr. BERNARD. Yes.

Mr. TAWNEY. And into their shear boom?

Mr. BERNARD. Yes; they have a shear boom.

Mr. TAWNEY. The Shevlin-Clarke Co. have a shear boom on the American side?

Mr. BERNARD. Yes; within 50 feet of the touch boom; and there are quite a few logs get away and float down to the dam.

Mr. TAWNEY. Do the Shevlin-Clarke people sort out their logs and tow them up again?

Mr. BERNARD. Generally send a boat down to the dam and gather up the sack boom and tow it up the river.

Mr. TAWNEY. The logs that escape as far as the dam, then, form into the sack boom and they take them up——

Mr. BERNARD. Yes; and sort them over again.

Mr. MAGRATH. The lumber industry is the main industry in that part of the river?

Mr. BERNARD. It is the only industry—lumber and paper.

Mr. MAGRATH. As a river operator, have you any suggestions to offer the commission as to an improvement that could be made there without **undue hardship to the lumber interests**?

Mr. BERNARD. Why, yes; I have. Generally about the logs above the bridge it could be improved upon——

Mr. MAGRATH. That is, the railway bridge?

Mr. BERNARD. Yes.

Mr. MAGRATH. Which bridge?

Mr. BERNARD. The Canadian Northern at Pithers Point. The logs are let loose above the bridge, and in a very strong west wind they are driven in next to Ranier and block it up. There is a big bay which does not show there.

Mr. TAWNEY. Next to Ranier?

Mr. BERNARD. Yes. We have been there three days at a time so that we could not get in the lake.

Mr. TAWNEY. What do you say happens there?

Mr. BERNARD. In strong west winds occasionally the logs are driven into the bay at Ranier and block it up, close the channel, and it becomes impossible for us to get through for a day or so, and at night it is dangerous. There is a very strong current there.

Mr. TAWNEY. Does it prevent you getting into the lake at all?

Mr. BERNARD. Yes.

Mr. TAWNEY. Or out?

Mr. BERNARD. Yes. The officer of the War Department was up there last summer and recommended an arrangement by which the channel would be kept open.

Mr. TAWNEY. This congestion is caused by the loose logs coming down **Rainy Lake**?

Mr. BERNARD. Yes; logs in boom. They come there in booms. They cross the lake.

Mr. TAWNEY. They come there in brails?

Mr. BERNARD. In sack brails, from two to five million feet in a load.



Mr. POWELL. When they get to the mouth of the lake—you mean that exit from the lake?

Mr. BERNARD. Yes.

Mr. POWELL. When they get to the outlet of the lake they bring the raft up and let the logs go, to be carried by the current?

Mr. BERNARD. Yes.

Mr. POWELL. And if a strong wind comes at that time which drives them into the bay, the result occurs as you suggest?

Mr. BERNARD. Yes.

Mr. POWELL. Who does this mostly?

Mr. BERNARD. The Shevlin-Clarke mill.

Mr. POWELL. Are they Shevlin-Clarke logs?

Mr. BERNARD. Yes; mostly.

Mr. BACKUS. How are you going to remedy that?

Mr. BERNARD. The War Department man recommends a string of booms from above the bridge down to the middle of that bay.

Mr. POWELL. What is the distance?

Mr. BERNARD. Possibly 500 feet; and that would leave us a channel about 25 feet, which would be sufficient for us to get through.

Mr. MAGRATH. Your channel would be on the American side?

Mr. BERNARD. Yes.

Mr. MAGRATH. Against the shore?

Mr. BERNARD. Yes; and there is 2 feet of water against the shore.

Mr. MAGRATH. In making that recommendation, has the department at Washington taken any steps to see that that is carried out?

Mr. BERNARD. I do not know.

Mr. LENANDER. Possibly the crib pile on the east side of the railway bridge was a beginning to that step.

Mr. BACKUS. If that were done, would that not narrow up the channel so that it would take a great deal longer to put the logs through there?

Mr. BERNARD. Yes; it would take longer.

Mr. BACKUS. Then the wind comes up and it blows the boom away off into the lake?

Mr. BERNARD. No; that could be anchored so that it would not go out in the lake. One alligator would hold it; just a temporary boom there would hold it until the logs go through and give us a chance.

Mr. MAGRATH. That is the only suggestion you have to make? You think the river below is in as satisfactory a condition as could be expected?

Mr. BERNARD. At the present time we have ample room to go through, with the exception of a few times. I have been held up there possibly half an hour, but that does not happen very often. It is only last spring during the high water we were held up more than usual.

Mr. TAWNEY. The effect of the boom at the outlet of the lake would be to prevent the logs congesting in the bay at Ranier, and would also require more time to get the loose logs off the boom when broken up down the river?

Mr. BERNARD. No; I do not believe it would take as much time, because you would have them gathered up.

Mr. BACKUS. It would take a little longer to get them through under the bridge?

Mr. BERNARD. Yes; but you would gain that down below. Now they have to take a couple of boats and sweep that up—to gather all logs that would not float into the current.

Mr. TAWNEY. Can you indicate a point for the location of this boom?

Mr. BERNARD. No; I can not.

Mr. TAWNEY. And the length of it?

Mr. BERNARD. I can not.

Mr. TAWNEY. I am asking you that because, in the consideration of this matter, the commission may impose any condition it sees fit, and it might be thought necessary to impose a condition—to give approval subject to a condition of that kind. It might be necessary for us to consider some specific proposition to prevent that.

Mr. BERNARD. It might be, say, 500 feet above the bridge and 500 below the bridge; probably 1,000 feet or more.

Mr. TAWNEY. So as to keep a channel of 20 to 25 feet under the bridge?

Mr. BERNARD. Yes.

Mr. TAWNEY. And that is right on the rapids?

Mr. BERNARD. Yes.

Mr. MURRAY. You have spoken of the boat at Kettle Falls. Now, there are other mills in other parts of the lake besides Kettle Falls, are there not?

Mr. BERNARD. Yes.

Mr. MURRAY. Lockhart & Co. have a large sawmill there?

Mr. BERNARD. There are two sawmills there.

Mr. MURRAY. One the Lockhart Co. (Ltd.), and they have a number of boats?

Mr. BERNARD. I think only two boats.

Mr. MURRAY. I do not know. I am just asking for information.

Mr. BERNARD. I do not know, either. I know they have one, and I think they have two.

Mr. MURRAY. And their business headquarters are at Fort Frances?

Mr. BERNARD. I think so.

Mr. MURRAY. They have quite a considerable mill up there?

Mr. BERNARD. Yes.

Mr. MURRAY. Then there is the Noel Lumber Co. mills—the old Northern Construction Co. mill?

Mr. BERNARD. Yes.

Mr. MURRAY. And they do quite a large lumber business?

Mr. BERNARD. Yes; principally ties, I believe.

Mr. MURRAY. There is the Indian Industrial School also on Rainy Lake.

Mr. BERNARD. Yes.

Mr. MURRAY. With quite an Indian population there?

Mr. BERNARD. Yes.

Mr. MURRAY. There is what is known as the Cascades; that is up on the Canadian side, some 30 miles up the lake?

Mr. BERNARD. Some 35 miles up the lake.

Mr. MURRAY. And a certain amount of traffic up the lake?

Mr. BERNARD. Yes.

Mr. MURRAY. Freight, and so on?



Mr. BERNARD. Yes: to the Falls.

Mr. MURRAY. And quite a number of summer cottages up there?

Mr. BERNARD. Yes; there are a few.

Mr. MURRAY. I think Dr. Nisson has a cottage up there?

Mr. BERNARD. Yes.

Mr. MURRAY. Then there is a good deal of fishing, is there not, on the Canadian side?

Mr. BERNARD. Yes: there is some.

Mr. MURRAY. Do you know how many fishermen?

Mr. BERNARD. I do not know exactly, but I think there are six or seven.

Mr. MURRAY. That is, men who are fishing for commercial purposes and exporting fish?

Mr. BERNARD. Yes: on the Canadian side.

Mr. TAWNEY. Six or seven firms or six or seven men?

Mr. BERNARD. Six or seven small firms: they have from one to five nets each.

Mr. TAWNEY. What is the probable amount of their annual catch?

Mr. BERNARD. They may bring down, say, 75 boxes a week.

Mr. TAWNEY. What would a box weigh?

Mr. BERNARD. About 100 pounds.

Mr. TAWNEY. About 7,500 pounds a week?

Mr. BERNARD. Yes.

Mr. TAWNEY. Does that continue throughout the fishing season?

Mr. BERNARD. That is, from the 15th of May until November.

Mr. TAWNEY. Fifteenth of May until the 1st of November?

Mr. BERNARD. It is about that on the Canadian side, and I think it is the same on the American side.

Mr. TAWNEY. You say 7,500 pounds from the Canadian side and the same amount from the other side?

Mr. BERNARD. Yes.

Mr. TAWNEY. We were unable to obtain any information concerning the fishing interests in the upper lake, and I am asking to get some idea of the magnitude of that interest. So that the aggregate would be about 15,000 pounds a week?

Mr. BERNARD. That is, in Rainy Lake.

Mr. TAWNEY. Is there any above that in the Rainy Lake?

Mr. BERNARD. There is possibly half as much again in the lake tributary to Rainy.

Mr. TAWNEY. On both sides?

Mr. BERNARD. Yes.

Mr. TAWNEY. In your judgment, would the aggregate catch amount to 20,000 or 25,000 pounds a week, all told, that comes down on Rainy Lake and Namakan and Kabetogama?

Mr. BERNARD. In the neighborhood of 250 boxes a week.

Mr. TAWNEY. From 200 to 250 a week?

Mr. BERNARD. Yes.

Mr. TAWNEY. And they weigh 100 pounds apiece?

Mr. BERNARD. Yes.

Mr. TAWNEY. Where did they come from?

Mr. BERNARD. The biggest part—that is, the American fish—mostly from Ranier, and the Canadian fish come through, part from Ranier and part from Fort Frances. Most of the Canadian fishermen sell their fish to Ranier.

Mr. TAWNEY. There is no duty on fish now, is there?

Mr. BERNARD. I do not know.

Mr. MURRAY. You spoke of nets; you mean pound nets?

Mr. BERNARD. Yes; and gill nets.

Mr. MURRAY. So that a man having a pound-net license would have how many men employed fishing with him?

Mr. BERNARD. Oh, two or three.

Mr. MURRAY. How far is Jackfish Bay from the bridge at Pithers Point?

Mr. BERNARD. Close to 6 miles.

Mr. MURRAY. It seems to run about 4 miles on the scale there.

Mr. BERNARD. It is a little farther than that.

Mr. MURRAY. The little ins and outs and bends would make it about 6?

Mr. BERNARD. Yes.

Mr. POWELL. You mean 6 in the direct travel?

Mr. BERNARD. Yes.

Mr. MURRAY. I mean to say 6 in traveling by water around to Jackfish Bay by the direct route.

Mr. BERNARD. Yes; that would be 6 miles.

Mr. MURRAY. When you mentioned the Canadian boatmen, did you include Mr. Gagnon?

Mr. BERNARD. Yes.

Mr. MURRAY. As well as Mr. Stimson?

Mr. BERNARD. Yes.

Mr. MURRAY. And there is a large number of privately owned boats on both sides?

Mr. BERNARD. Yes.

Mr. MURRAY. You spoke of being held up only some 15 minutes, and then I think you said half an hour, by this boom or drag boom?

Mr. BERNARD. Yes.

Mr. MURRAY. It would take a great deal longer than that to tow it out of your way. Do you mean that you would tow it out with your own boat?

Mr. BERNARD. No; I think I have been held up by other boats—that is, the International Lumber Co.'s boats—but not to exceed the time I gave.

Mr. MURRAY. You say you never made a complaint, but I suppose you often felt like complaining?

Mr. BERNARD. Yes; I have. Five minutes looked pretty long when you were waiting.

Mr. MURRAY. Were you ever met with the difficulty of having the boom drift across the channel when it was stationery; that is, when it was not connected with the towboat?

Mr. BERNARD. Yes.

Mr. POWELL. You mean the temporary sack boom?

Mr. BERNARD. Yes.

Mr. MURRAY. When it has been anchored or supposed to be anchored for the night?

Mr. BERNARD. No; in the daytime, when they were working on it.

Mr. MURRAY. Then your delay would be a great deal longer than half an hour?

Mr. BERNARD. Yes.



Mr. GARDNER. Supposing we ordered them to take that boom out: what effect would it have on the sawmill of these people there?

Mr. BERNARD. Sawmills can not be operated without these facilities.

Mr. GARDNER. Would we virtually destroy the mill if we refused to allow it?

Mr. BERNARD. I think you would.

Mr. GARDNER. Lying in there as it is now, according to your best judgment, does that materially affect navigation along that line to such an extent as to make it a serious difficulty?

Mr. BERNARD. It would interfere some.

Mr. GARDNER. You think it could be greatly remedied by having some alteration made above the mill?

Mr. BERNARD. Yes.

Mr. MURRAY. I do not wish to be understood that I was asking for the removal of the boom at all. We want it regulated.

Mr. GARDNER. You are simply asking to reduce it. You certainly don't want to make it much less than it is now or it would practically be nothing.

Mr. MURRAY. They might get some booming rights farther down which would more than compensate them.

Mr. TAWNEY. Coming back again to the fishing interests, how closely are you in touch with the fishing interests on Rainy Lake, the upper lake?

Mr. BERNARD. I am not in touch at all.

Mr. TAWNEY. What opportunities have you to judge as to the amount invested in the equipment of those who are engaged in the fishing interest?

Mr. BERNARD. I could not say.

Mr. TAWNEY. Either as to boats or nets or anything of that kind?

Mr. BERNARD. No.

Mr. TAWNEY. There are no fisheries up in the upper lakes, are there—I mean where they pack and ship fish?

Mr. BERNARD. No; the fishermen take their own fish in boxes, and they haul the boxes from Ranier or International Falls, and take their fish in ice and haul them down.

Mr. TAWNEY. Have they ice houses up in the lake?

Mr. BERNARD. Yes. Each fisherman has his ice house.

Mr. TAWNEY. Have you any idea of the number of men that are employed in the industry up there?

Mr. BERNARD. Not to exceed 100 men all over.

Mr. MAGRATH. Both lakes?

Mr. BERNARD. Both lakes.

Mr. MAGRATH. Have you any idea of what the value of this annual catch is?

Mr. BERNARD. They get from 5 cents to 8 cents a pound for their fish delivered at the station.

Mr. MAGRATH. Would an average price of 6 or 6½ cents be a fair average price?

Mr. BERNARD. Yes.

Mr. MAGRATH. What kind of fish do they catch mostly?

Mr. BERNARD. Wall-eyed pike and pickerel.

Mr. MAGRATH. Any whitefish or sturgeon?

Mr. BERNARD. Yes.

Mr. MAGRATH. The species of the fish is about the same as that caught on the Lake of the Woods?

Mr. BERNARD. About the same.

Mr. MAGRATH. Do they have what is called jackfish up there?

Mr. BERNARD. Pickerel, we call it.

Mr. MURRAY. I think the price is  $8\frac{1}{2}$  or 9 cents.

Mr. POWELL. There is a very important legal point in regard to which I think we had better understand your contentions before hearing evidence. Do I understand your contention to be that if that boom remains there the International Lumber Co. would have no right at all to transport their logs down stream by means of the sack boom? Do you object to the use of the sack boom, or do you object to the unreasonable use of the sack boom?

Mr. MURRAY. We are not objecting to the use of the sack boom there. We have not raised that question.

Mr. POWELL. Better think before you put yourself on the record about that, because we want to know definitely. There has been a good deal of talk about the effect of the sack boom.

Mr. MURRAY. Your question is directed to the point that you may make some regulation concerning the sack boom as a condition.

Mr. POWELL. Yes.

Mr. MURRAY. I have not considered it with reference to that.

Mr. POWELL. Do you consider the gathering of those logs into a sack boom adjoining the other boom analogous entirely to the mooring of a vessel at the end of a pier to receive a cargo, and that the principles in both cases are the same? There is the right to do it, but that right must be exercised reasonably, and the objection is not to the boom itself, but to the unreasonable use of it.

Mr. MURRAY. That is as far as we can go.

Mr. POWELL. Is that your view Mr. Anderson?

Mr. ANDERSON. I have not considered it. It appears to me that there might be a distinction between the sack boom and the other, but as a matter of abstract law, the parties operating the boom would not be entitled to operate the sack boom.

Mr. POWELL. You would not regard that as a necessary use of navigation?

Mr. ANDERSON. No.

Mr. POWELL. What is your view, Mr. George?

Mr. GEORGE. We say, as far as the Fort Frances Paper & Pulp Co. is concerned that is the only reasonable and feasible method of getting our raw material.

Mr. POWELL. You claim it as a right, and you say you are entitled to use it reasonably.

Mr. GEORGE. We say we are doing it reasonably.

Mr. POWELL. And you say it is analogous to the necessary stopping of a vessel on a stream for the purpose of loading?

Mr. GEORGE. Yes.

Mr. GLENN. What do you object to? You do not want to interfere with the sack boom. In a concrete way, what are you objecting to?

Mr. MURRAY. We object to the boom approaching as close as it is proposed to the Canadian boundary. We want it shifted back, so that it should be 100 feet to the south of the international boundary



so as to provide a reasonably wide channel there, and that channel if it were widened to that extent would obviate all the difficulty of the sack boom, and all the other means of navigation, because, I think, the sack boom is one form of navigation.

Mr. MAGRATH. The sack boom would have to cross the channel?

Mr. MURRAY. Yes.

Mr. TAWNEY. Has anybody testified as to how far, or how close to the international boundary the Shevlin-Clarke boom comes?

Mr. MURRAY. Except from the plan. That cluster of piles, I think by scaling on the plan, shows 175 feet.

Mr. TAWNEY. The Shevlin-Clarke boom is within 175 feet of the international boundary line?

Mr. MURRAY. It is farther than that. This is the narrow belt.

Mr. TAWNEY. That is the narrowest part between the two booms?

Mr. MURRAY. Yes.

Mr. TAWNEY. The other boom is not out to the international line.

Mr. MURRAY. It is shown on the large plan. The only way to ascertain that would be just to make a scale.

#### STATEMENT OF MR. H. J. MINER, MEMBER OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MINNESOTA.

H. J. MINER, being duly sworn, testifies as follows:

Mr. GEORGE. I understand you are a member of the House of Representatives of the State of Minnesota?

Mr. MINER. Yes.

Mr. GEORGE. And member for Koochiching County?

Mr. MINER. Yes.

Mr. GEORGE. And you are a resident of International Falls?

Mr. MINER. Yes.

Mr. GEORGE. And have been for a considerable number of years?

Mr. MINER. Fourteen years.

Mr. GEORGE. Are you conversant with navigation as it has existed during that time in Rainy River?

Mr. MINER. I am.

Mr. GEORGE. Have you owned a motor boat?

Mr. MINER. No; I have never owned a motor boat.

Mr. GEORGE. Have you had occasion to navigate the waters of Rainy River?

Mr. MINER. A great many times.

Mr. GEORGE. What do you say as to the obstruction to navigation in Rainy River at that point opposite the International Lumber Co.'s mill where their boom is at present constructed?

Mr. MINER. I have passed up the river in boats a great many times, of course, by their boom in front of their mill, and I have never—and in fact, all boats I have traveled on have never—experienced any difficulty in getting through there. Of course, there have been times in abnormally high water or on a stormy night when there seemed to be a little obstruction, but it has always been taken care of very quickly; and I do not think, as far as I have been able to judge, that there has been any great difficulty there in my experience.

Mr. TAWNEY. Have you ever heard of any collision or losses of property or life?

Mr. MINER. No; I never have.

Mr. TAWNEY. And you have lived there for 14 years?

Mr. MINER. Yes.

Mr. TAWNEY. If there was any collision or serious loss sustained, would you in all probability have heard of it?

Mr. MINER. I think I would.

Mr. TAWNEY. You live right in the city of International Falls?

Mr. MINER. Yes. I can not recollect now that I have ever heard of any accident in a boom there where there was any loss of life or anything of that kind.

Mr. TAWNEY. It is only a matter of inconvenience to traffic, is it?

Mr. MINER. At times.

Mr. GLENN. Have you heard complaints of people being held up there?

Mr. MINER. I have heard at Rainy River bridge, where the company were letting down logs, both the Canadian as well as the American company——

Mr. GLENN. But not lower down?

Mr. MINER. No.

Mr. GEORGE. Not in close proximity to the International Co.'s boom?

Mr. MINER. No.

Mr. MURRAY. Have you a cottage up the lake there?

Mr. MINER. No; I have not.

Mr. MURRAY. You just go up from time to time?

Mr. MINER. Yes; boating and fishing.

Mr. GEORGE. I had intended to call Senator Nord, who is a resident of the place, but he is not available at the present; but I do not know that he could add anything more to the evidence already given. I think his testimony would largely corroborate the evidence of Miner and Bernard.

Mr. MAGRATH. This boom was only constructed under the permit of 1911.

Mr. GEORGE. Yes; but this evidence has relation to the conditions prior to the construction, and they have not been changed.

Mr. TAWNEY. Is there any further evidence to offer?

Mr. ANDERSON. If the private interests wish to make any representations, perhaps they had better be heard before we proceed. I have a statement to make on behalf of the Dominion Government, and wish to offer evidence, but I wish to do it after the other evidence is in.

Mr. CLAPP. I wish to call attention to this map which was filed with the statement of the Shevlin-Clarke Co. [Exhibit F]. The part shaded green on that map is simply a tracing of the Shevlin-Clarke Co. map under which they maintain this water lot, and I do not know that it would show the exact location of the boom that was actually constructed.

Mr. MIGNAULT. That was the license from the Ontario government!

Mr. CLAPP. Yes. I want to call attention to the fact that these two piers which are shown on map E apparently go——

Mr. POWELL. You mean the three piers in line transversely to the street on plan D. They come, I should say, not closer than 250 feet to the international boundary?

Mr. MAGRATH. It is much more.



Mr. CLAPP. Well, it may be 300 feet, and I want to call attention to the fact that they are authorized to build a boom within 132 feet. Now, the mere fact, if it has any bearing at all, about their holding logs in here, would not show that they went beyond their authority if they had those three piers extended to within 132 feet and ran their booms straight out 132 feet; so that the fact that their permanent booms, as shown on Exhibit E, shows these three piers——

Mr. TAWNEY. You mean the Shevlin-Clarke people?

Mr. CLAPP. Yes.

Mr. TAWNEY. Not the International Co.?

Mr. CLAPP. No. I want to call attention to the fact that all the works within the boom which was described by Mr. Lenander may be entirely within the limits of the Shevlin-Clarke Co. Now, as we said in our statement, we have no objection to the granting of this application, so far as the Shevlin-Clarke Co. is concerned. Of course we are members of the community of Fort Frances and members of the general public, and if the interests of the general public and Fort Frances are reasonably protected we shall not have any objection. Now, in regard to something that has been said of the way logs are handled at Pithers Point, I am not a practical lumberman, and do not know about the conditions. If they are not properly handled, if they do not properly protect the interests of navigation there, I assume they will do so when their attention is called to it, and as far as I know are preparing to do so, even to follow the suggestion of Mr. Bernard. That is something I do not know anything about. But Mr. Tawney said something about making it a condition of granting the application of the International Lumber Co. that the Shevlin-Clarke Co. do something up at——

Mr. TAWNEY. I did not say who.

Mr. CLAPP. I assumed if the commission was going to take jurisdiction of the question of navigation, that is simply a question of navigation up there, and if they were going to take jurisdiction on that question, I assume we would be given notice.

Mr. TAWNEY. If the obstruction is as described here, not only not in the interests of navigation, but absolutely raising the level of the water on the other side, that would give this commission jurisdiction, but I do not know that it would have jurisdiction, as a condition of its order, to impose an obligation to be carried out by a party who is not a party to the application, or who has nothing to do with the boom.

Mr. CLAPP. With reference to Shevlin-Clarke action up there, of course I do not know if they use reasonable care or not, but if it is called in question at any time we should have notice.

Mr. TAWNEY. It would be proper for the commission to call the attention of both Governments to the conditions brought out in this investigation and hearing for the purpose of having the two Governments take some action with respect to correcting the evil which now exists in consequence of this obstruction.

Mr. CLAPP. I should not like the commission to assume that the condition is as stated, or that if it is stated, it is the result of not exercising reasonable care in navigation. I simply can not say anything about it because I do not know, but I should not like the commission to assume simply because one of the witnesses has called attention to it that there is anything wrong.

Mr. POWELL. Just opposite this line of the stream there are three piles indicated on the plan B on the Canadian side. Have you any objection to these?

Mr. CLAPP. I imagine those piles, from the scale, come over into the waters that are reserved to us in our license, and I would not say we have any objections to those. The application here is for a permanent boom which does not cross the international boundary, and we have no objection to the granting of the application.

Mr. TAWNEY. You are not affected at all?

Mr. CLAPP. No. Those three booms, if they are objectionable to us, will be taken away when this application is granted.

Mr. GEORGE. Might I be permitted to ask Mr. Clapp one question in order to get the matter on the record?

Mr. TAWNEY. Certainly.

Mr. GEORGE. The storage facilities controlled by the Shevlin-Clarke Co. (Ltd.) and which occupy that part of Rainy River inclosed by the heavy, green line in Exhibit F were obtained under what authority?

Mr. CLAPP. Under the authority of a license from the minister of lands, forests, and mines of the Province of Ontario.

Mr. MIGNAULT. What date?

Mr. CLAPP. I have not the date here. I can get it. I think it was in the year 1910.

Mr. GEORGE. I think it was 1911. I was solicitor for the town of Fort Frances when the matter came up. Was the granting of that license of occupation for this booming privilege in Rainy River approved of by the town of Fort Frances?

Mr. CLAPP. I was not attorney for the town at that time, but I presume that it was. You would know it was.

Mr. GEORGE. I know it was, but I want to get it from you.

Mr. TAWNEY. Mr. Murray will probably concede that.

Mr. MURRAY. Yes. I am not attacking the Shevlin-Clarke Co.

Mr. TAWNEY. For the purpose of this hearing it will be conceded?

Mr. MURRAY. Yes. I was not there at the time.

Mr. POWELL. You accept that statement for the purposes of this case.

Mr. MURRAY. Yes.

Mr. GEORGE. There was no international authority asked for in connection with the setting apart of that storage ground in the international waters of Rainy River?

Mr. CLAPP. You would know more about that than I would. You mean the approval of this commission?

Mr. GEORGE. Yes; or the consulting with any authority in the United States?

Mr. CLAPP. Well, so far as any records I have ever seen are concerned, it is possible the minister of lands, forests, and mines of the Province of Ontario may have consulted authorities in the United States, but that is before my time.

Mr. TAWNEY. Has the matter been referred to you, Col. Schulz?

Col. SCHULZ. No.

Mr. GEORGE. The only point I want to bring out is that the town of Fort Frances approved of this large grant of water in this international stream as storage ground, and they took exception to the grant on the other side of the international waters.



Mr. TAWNEY. What is the relative difference in the size of the two areas, if any?

Mr. GEORGE. Mr. Backus in his evidence says it was approximately three times as large.

Mr. TAWNEY. The Shevlin-Clarke boom facilities?

Mr. GEORGE. Yes.

Mr. TAWNEY. Three times as large?

Mr. GEORGE. Yes. The engineers can figure that out on the plan. It involves the shore line of nearly  $2\frac{1}{2}$  miles on the shore.

Mr. CLAPP. Let me ask a question: Is the eastern end of the black line shown on Exhibit F the eastern end of the International Lumber Co.'s boom?

Mr. GEORGE. I could not say that in respect to Exhibit F, because that is the map your company prepared and filed, but in respect of a plan filed by the applicant company, which is Exhibit E; that is fixed on that map at a certain point. That is all that I know about it.

Mr. TAWNEY. The two booms testified to here this morning are opposite each other for a distance of 2,260 feet. That was testified to this morning.

Mr. MAGRATH. That is based on the assumption that the grant covered by the Shevlin-Clarke Co. is the ground that they have piled.

Mr. CLAPP. Yes.

Mr. MIGNAULT. You are not certain as to that?

Mr. CLAPP. I am certain that their piles follow the line of their authorization.

Mr. TAWNEY. Testimony was given as to the fact.

Mr. MIGNAULT. Assuming that the Shevlin-Clarke booms follow the lines of the booms of the applicant what would be the free space between the two?

Mr. TAWNEY. It was testified to as from 175 to 220 feet.

Mr. CLAPP. That is in relation to the present position. The International Lumber Co.'s booms at present at points are closer to the international boundary and at points across from the international boundary—closer than it will be. We have said that the smallest free space as between the booms as authorized will be 230 feet of open water.

Mr. MAGRATH. I understand that Mr. Anderson proposes to bring this all out from the plan compiled as to the exact location of those two booms.

Mr. POWELL. You were asked about the terminus of that, Mr. Clapp. Plan D in evidence shows the upper terminus of the International's boom a little farther upstream than the terminus as shown on plan F, does it not?

Mr. CLAPP. Apparently a little farther east. I should say: just that one pier east.

Mr. MAGRATH. About one length of the boom?

Mr. CLAPP. That is a long length of boom, but one pier.

Mr. MURRAY. Your boom as it exists does not in fact include all the land you are authorized to include under your license?

Mr. CLAPP. It does not at the west end. There is not as much water inclosed at the west end as we are authorized to inclose.

Mr. MAGRATH. So that you might if you really took up all the space that you were authorized to take, narrow the channel very materially?

Mr. CLAPP. Well, we have our boom built there, and if we built out we would come out within 132 feet of the international boundary.

Mr. POWELL. You can not build it without our consent.

Mr. CLAPP. Not beyond our authority, but I mean if we build out to that point we would come within 132 feet.

Mr. MIGNAULT. Did you get any authority from the Dominion Government for the construction of your boom in Rainy River under the navigable waters protection act?

Mr. CLAPP. I can not answer that except to say that I was told by the company that their authority for maintaining this boom was this license from the minister of lands, forests, and mines of Ontario. They may have something else.

Mr. GEORGE. It is a license of occupation, revocable at will.

Mr. MIGNAULT. Do you know, Mr. George, whether they have ever obtained authority from the Dominion Government?

Mr. GEORGE. Yes; I think approval was granted for their plans by the public works department of Canada.

Mr. TAWNEY. Are there any other private interests who want to be heard? If so, we will hear them now; otherwise we will take a recess until 10 o'clock to-morrow morning. Mr. Anderson, how long will it take you to present what you want to put before the commission?

Mr. ANDERSON. As far as I am concerned, it will not take very long. It depends somewhat upon the cross-examination of my witnesses. I can not vouch for that, but my examination will be very short, and I think I should be able to get through within an hour.

Mr. TAWNEY. That would run us up until after 6 o'clock. What is the pleasure of the commission? Do you want Mr. Anderson to proceed now?

Mr. POWELL. Do you want to proceed now, Mr. Anderson?

Mr. ANDERSON. It is immaterial to me.

Mr. MIGNAULT. I would go on until 5 o'clock.

Mr. TAWNEY. All right, then; we will proceed until 5 o'clock.

Mr. ANDERSON. Mr. Chairman, the position of the Dominion Government with reference to this application is this: We realize the extensive industries represented by companies controlled by Mr. Backus and their public benefit, and we do not desire at all to curtail in any way the operation of those industries, provided, of course, that no right of the public is seriously affected. We do suggest, however, that the commission ought to be very careful in giving approval to the plan to see that the rights of navigation are adequately and sufficiently protected. That is the standpoint from which the Dominion Government is more particularly interested. It is interested in seeing that the navigable river is not unnecessarily obstructed.

What we suggest is this: That a sufficient space be left adjacent to the international boundary line, a space upon each side of the boundary line, to accommodate navigation. One reason we suggest that is that the line of deepest water corresponds, roughly speaking, to the international boundary line along the proposed boom. The boom evidently has to be reconstructed, so it will not be any particular hardship on Mr. Backus.

Mr. TAWNEY. Mr. Anderson, do I understand you to claim that there should be the same amount of open water between the inter-



national boundary on the United States side and the boom that there is on the Canadian side, or that the area of open water on each side of the boundary should be equal?

Mr. ANDERSON. That, of course, would be determined to a large extent by circumstances. One reason why I suggest it would be proper to do that is because the line of deepest water runs along about the international boundary line. Of course, if it ran on either side to any considerable extent, that would be a factor to be considered by the commission.

Mr. TAWNEY. I understood you to say that the international boundary line passed through the deepest water in the river and that you were advocating, therefore, that the contribution to navigation should be equal on each side.

Mr. ANDERSON. Yes; I am suggesting that it should be so, for this reason: It is quite conceivable that a further boom might be authorized on the Canadian side, and if it were authorized up to the international boundary line the navigation would be blocked. There is a boom there now—that of the Shevlin-Clarke Co. While it extends to within 132 feet of the international boundary line, still somebody else may conceivably apply for a boom west of the Shevlin-Clarke Lumber Co.'s boom, and they might ask for permission to build out to the center of the stream. That is a mere suggestion on my part.

Mr. TAWNEY. If that condition should arise hereafter, the applicant would have to secure the approval of this commission at that time, and then the condition on the other side could be taken into consideration?

Mr. ANDERSON. Yes; but there is this to be said on that point: While it has been stated during this investigation that this would only be a permission at pleasure, still it is a permanent structure, and you know how difficult it is to get rid of permanent structures and the disinclination of any governmental body to interfere with what may be a permanent structure and under which vested rights may have grown up.

The suggestion has been made that the International Lumber Co. requires the amount of space within the limits of this new proposed boom. There is another way in which I suggest that that might be obtained. The boom might be extended up the river and in that way they could get the additional booming space.

Just what space should be left free there for navigation is a matter that I shall have to leave with the commission, but we are suggesting that there should be a space of 200 feet and as nearly as possible equally on each side of the international boundary line.

Mr. TAWNEY. Have you any record of the soundings taken in Rainy River for the purpose of determining the depth of water?

Mr. ANDERSON. The map that we have filed indicates the line of deepest water. Where that is produced from I do not know.

Mr. TAWNEY. Is there any claim that the water north of the boundary line is too shallow to accommodate the needs of navigation?

Mr. ANDERSON. I have not heard that suggested. It has been suggested that navigation has been interfered with, not on the ground of shallowness of water, but on account of obstructions.

Another matter that I would suggest to this commission is that in any approval that they give for the construction of this boom they should maintain the same regulation over the operation of it; that it should be subject from time to time to the approval of the commission as to method of operation, because there is one thing that we complain of—and it is a matter that we would ask that you bear in mind when you are dealing with it—and that is that this is used not as a boom, but as a storage ground, and in using it as a storage ground there is a large area of the river there that is packed from top to bottom with logs, the area of water in the river being thereby reduced. In other words, it should be confined strictly to booming purposes and the logs should be kept afloat. I imagine that there would not be any great difficulty in that if it were not used to such an extent as it is for storage purposes. That is substantially what we have to say upon the situation, but I would like to call two or three witnesses to speak more particularly with reference to the actual condition of affairs. I will first call Mr. Langlois.

**STATEMENT OF MR. A. LANGLOIS, CIVIL ENGINEER FOR THE  
DEPARTMENT OF PUBLIC WORKS OF CANADA.**

Mr. A. LANGLOIS, being first duly sworn, testified as follows:

Mr. ANDERSON. Mr. Langlois, your occupation is what?

Mr. LANGLOIS. Civil engineer for the department of public works of Canada.

Mr. ANDERSON. Did you make a survey upon which this map, Exhibit D, was prepared?

Mr. LANGLOIS. Yes; I made the survey for that plan which is marked "Exhibit D."

Mr. ANDERSON. When did you make the survey?

Mr. LANGLOIS. I made the survey for the shore lines in 1913 and the survey for all the booms in May, 1914.

Mr. ANDERSON. Do you say that that plan is a correct plan of the boom as it exists of the International Lumber Co.?

Mr. LANGLOIS. Yes, sir.

Mr. ANDERSON. What other boom does it show opposite the boom of the International Lumber Co.?

Mr. LANGLOIS. It shows the booms and everything in sight on the river at the time of the survey. It shows the Shevlin-Clarke Co.'s boom.

Mr. ANDERSON. How is the boom of the Shevlin-Clarke Co. as shown on this map marked?

Mr. LANGLOIS. It is the same as the other except that these little white spots mean one single pile, and these circles show the number of piles that are in each cluster.

Mr. POWELL. The lines dotted white exclusively show the floating booms of the Shevlin-Clarke Co.?

Mr. LANGLOIS. Yes.

Mr. POWELL. And the lines consisting of white dots and red rings cover what, the boom of the International Lumber Co. as at present existing?

Mr. LANGLOIS. No; it shows all the clusters. If there was a cluster here of five piles it would be shown exactly the same as this one.



Mr. POWELL. But the booms follow the clusters, Mr. Langlois. That shows the location of the boom?

Mr. LANGLOIS. These circles show the location of the boom on the American side.

Mr. POWELL. Then the white and red show the clusters and the lines of the boom on the American side?

Mr. LANGLOIS. Yes, sir.

Mr. ANDERSON. And the white ones show the lines of the boom of the Shevlin-Clarke Co. That is the distinction on the map?

Mr. LANGLOIS. There is no distinction between the two booms.

Mr. ANDERSON. Well, there is a distinction upon the map.

Mr. LANGLOIS. These white circles are intended to show just one pile, and where there are circles they show the clusters. The figures inside show the number of piles.

Mr. POWELL. This statement that these white dotted lines give the lines of booms of the Canadian company is true so far as they are located on the northern side of the international line?

Mr. LANGLOIS. Yes.

Mr. ANDERSON. And the International Lumber Co.'s boom is indicated also correctly upon this plan on the other side of the line.

Mr. LANGLOIS. Yes; with circles.

Mr. ANDERSON. When you made the survey there what did you find the condition of affairs to be as to the storage of wood and timber in the booms? I mean particularly the boom of the International Lumber Co.

Mr. LANGLOIS. We had quite a lot of trouble in taking our soundings inside of the American boom on account of the amount of logs that were stored inside of the boom; principally at this place here [indicating].

Mr. ANDERSON. That is on each end of it?

Mr. LANGLOIS. On the seat end. Between those two places it was impossible to go down to the bottom, because it was filled from the top to the bottom of the river.

Mr. ANDERSON. To what extent does that extend?

Mr. LANGLOIS. So far as I could see, it extended about as far as the outside boom.

Mr. ANDERSON. East and west how far?

Mr. LANGLOIS. About 1,800 feet, but it was not quite down to the bottom here [indicating].

Mr. ANDERSON. Do not say "here," because that does not mean anything on the record. What did you say with reference to how far west it was?

Mr. LANGLOIS. Starting at the east end of the boom, it was full for a distance of about 1,800 feet.

Mr. ANDERSON. Then west of that?

Mr. LANGLOIS. Then from there it started to get thinner; there were less there.

Mr. ANDERSON. To what extent would you say they went to the bottom of the river west of the 1,800-foot limit which you mentioned?

Mr. LANGLOIS. I found that they were packed down to the bottom only to here [indicating]; that is, from the 1,800-foot point.

Mr. ANDERSON. But west of that they were still heavily packed, but not to the bottom?

Mr. LANGLOIS. Yes; between the 1,800-foot section, starting half-way from the bottom to the shore line, starting at nothing here [indicating], it raised up above the water surface for 5 or 6 feet.

Mr. ANDERSON. That is for about half the width.

Mr. LANGLOIS. Yes; starting at half the width as we approached the shore on a slope. The logs were piled up above the water surface about 5 or 6 feet.

Mr. GARDNER. You say they were packed from the bottom of the river clear out to the outer boom?

Mr. LANGLOIS. Yes; as far as we could see.

Mr. ANDERSON. What effect would that have upon the water in the rest of the river?

Mr. LANGLOIS. It would have the effect of increasing the velocity over here [indicating].

Mr. POWELL. And raising the level?

Mr. LANGLOIS. Raising the level; yes.

Mr. ANDERSON. Would it have any other effect?

Mr. LANGLOIS. No.

Mr. ANDERSON. Did you observe anything with reference to the obstructions in the river, apart from the actual booms there?

Mr. LANGLOIS. Well, there was quite a lot of floating logs in 1913. In July, 1913, we were stuck up here [indicating], I think, for two days above the upper limits of the boom. It was impossible to go through there for two or three days in July, 1913, on account of floating logs. The river had been filled with logs.

Mr. ANDERSON. What is the distance at the nearest point between the boom of the Shevlin-Clarke Lumber Co. and the boom of the applicant company?

Mr. LANGLOIS. Do you mean the shortest distance?

Mr. ANDERSON. Yes; the shortest distance.

Mr. LANGLOIS. About 225 feet.

Mr. ANDERSON. What proportion of that is on each side of the boundary?

Mr. LANGLOIS. About 125 feet from the Shevlin-Clarke Co.'s boom to the boundary line and 150 feet from the boundary line to the American boom.

Mr. ANDERSON. As a matter of fact, the witness is excluding the outer pile there in making his present computation. That is not the nearest point, is it, Mr. Langlois?

Mr. LANGLOIS. It is 180 feet; 1,000 feet below the Shevlin-Clarke Co.'s boom.

Mr. POWELL. Is that between the outer pier and the crossline?

Mr. LANGLOIS. Yes; up to this cluster here [indicating].

Mr. ANDERSON. At the point in question the boom of the International Lumber Co. comes over to the Canadian side of the international boundary. That is so, is it not?

Mr. LANGLOIS. Yes.

Mr. MAGRATH. That is the distance of the three piles that have been spoken of on more than one occasion in the evidence.

Mr. POWELL. How far is it from that angle to the international boundary line?

Mr. LANGLOIS. One hundred and ten feet.

Mr. POWELL. Northward of the boundary line?

Mr. LANGLOIS. Yes; northward of the boundary line.



Mr. CLAPP. Do I understand that that would make the farthest south of those cross piles 290 feet from the international boundary?

Mr. MAGRATH. Yes.

Mr. ANDERSON. That is all I have to ask, Mr. Langlois.

Mr. MURRAY. Did you notice anything in connection with the shore erosion on the Canadian side, Mr. Langlois?

Mr. LANGLOIS. No; not down here. Farther up on the lake I did.

Mr. MURRAY. Nothing in the town limits?

Mr. LANGLOIS. No; I did not notice anything there.

Mr. MURRAY. In your opinion as an engineer, would this accumulation of logs which you spoke of divert the current so as to cause a greater shore erosion on the Canadian side at Fort Frances?

Mr. LANGLOIS. Yes; I think so.

Mr. POWELL. That is, in two ways—to make the water higher and the velocity greater.

Mr. MURRAY. Then, referring to the wave action of motor boats, would the fact that motor boats are compelled to approach nearer the Canadian shore increase the erosion on the Canadian shore?

Mr. LANGLOIS. The large boats would.

Mr. MURRAY. Take those fast-traveling motor boats which raise a very considerable wave.

Mr. LANGLOIS. If they go close enough.

Mr. POWELL. Supposing you put it this way: The nearer the boat the greater is the disturbance of the water?

Mr. LANGLOIS. Yes; but there is a smaller amount of large boats traveling on the river.

Mr. MURRAY. Did you not observe there some very speedy motor boats?

Mr. LANGLOIS. Yes.

Mr. MURRAY. They make a very considerable swell, do they not?

Mr. LANGLOIS. Yes; but still not enough to make a big difference.

Mr. MURRAY. We think they do. Do you know the character of the soil there on the bank?

Mr. LANGLOIS. Yes; it was clay, I think, if I remember correctly, on the American side.

Mr. MURRAY. I am referring to the Canadian side.

Mr. LANGLOIS. It is clay and sand.

Mr. MURRAY. It is a very pliable sort of soil, is it not?

Mr. LANGLOIS. Yes.

Mr. MURRAY. Did you notice, as a matter of fact, whether the shore had been considerably eroded on the Canadian side?

Mr. LANGLOIS. No; I did not notice that.

Mr. GEORGE. Mr. Langlois, the conditions existing in Rainy River, with respect to which you have given evidence, are as you found them in the year 1913 and the spring of 1914, I understand?

Mr. LANGLOIS. Yes, sir.

Mr. GEORGE. You state that on one occasion you were held up by an obstruction in the river above the International Lumber Co.'s boom?

Mr. LANGLOIS. Yes. I would state that the whole river from the old ferry dock here was full of logs up to the Shevlin-Clarke Lumber Co., and farther up above.

Mr. GEORGE. Those were logs that were being allowed to go downstream, were they not, through the log sluiceway at this dam?

Mr. LANGLOIS. I could not say as to that.

Mr. GEORGE. Did you know whose logs they were?

Mr. LANGLOIS. I could not tell you.

Mr. GEORGE. Do you recollect whether or not that was the boom of the Rat Portage Lumber Co. on its way to Rainy River?

Mr. LANGLOIS. I know that at that time there was a boom broken up on the lake.

Mr. GEORGE. And the logs came down loose?

Mr. LANGLOIS. Yes; but this happened more than once.

Mr. GEORGE. You do not recollect that those were logs that were bound for the lower river?

Mr. LANGLOIS. No; I could not say.

Mr. GEORGE. As a matter of fact, you do not know what company the logs belonged to?

Mr. LANGLOIS. No; I do not.

(Thereupon, at 5 o'clock p. m., a recess was taken until 10 o'clock a. m. Wednesday, January 24, 1917.)

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WEDNESDAY, January 24, 1917.

The commission reconvened at 10 o'clock a. m.

Mr. TAWNEY. In the temporary absence of the chairman I have been requested to call the commission to order and proceed with this hearing. The engineers were requested yesterday to transfer certain physical data from the three maps to one map for the convenience of the commission. Col. Schulz, have you concluded your work in connection with the transfer of such data? If so, you may proceed.

Col. SCHULZ. The permit line that the Secretary of War has recommended for approval is this red line here. It follows the boundary line within 10 feet for quite a distance and then is south of the boundary.

Mr. GLENN. Which is the line representing the boundary?

Col. SCHULZ. The yellow line is the international boundary.

Mr. POWELL. Do these coincide?

Col. SCHULZ. They are 10 feet apart there.

Mr. TAWNEY. For the record, Col. Schulz, state what these different lines in different colors on Exhibit D indicate.

Col. SCHULZ. The yellow line represents the international boundary; the heavy red line on the south side of the boundary represents the limiting positions of the boom which the International Lumber Co. now wants and which the Secretary of War has approved; and the line composed of white circles, partly red, is the present position of the International Lumber Co.'s boom, which is in certain places north of the international boundary now and in some places is in the rear of the boundary and does not coincide particularly with their new permit anywhere. The Shevlin-Clarke Co.'s boom is also shown in red, but it runs through a series of solid white circles and is on the north side of the international boundary. We could, of course, take a piece of yellow chalk and write them on here as indicating the different booms, but I guess you will understand it.

Mr. POWELL. What is the solid red line that skirts the shore on the Canadian side?



Col. SCHULZ. That is the inside position of the boom area of the Shevlin-Clarke Co.

Mr. POWELL. Is there open water inside of that?

Col. SCHULZ. It is all water, but I understand that they have the privilege of filling it with logs.

Mr. POWELL. What is this lane along the shore?

Mr. CHAPLEAU. When the Shevlin-Clarke people asked for this, one of the conditions was that they should supply a water lane 100 feet wide from the end of Scott Street following the shore to give access to the river. This place is full of logs.

Mr. TAWNEY. There are 100 feet of open water between the boom and the shore.

Mr. CHAPLEAU. Yes; all along from Scott Street.

Mr. TAWNEY. From Scott Street east to Pithers Rapids?

Mr. CHAPLEAU. Right to the foot of Pithers Rapids.

Mr. TAWNEY. The heavy red line south of that indicates the extreme limit of the right of the Shevlin-Clarke Co. to inclose the water there to maintain the south line of the boom.

Mr. CHAPLEAU. That is correct.

Mr. MAGRATH. Where did you obtain the information that has enabled you to locate that boom on this map?

Col. SCHULZ. This map was made by the Canadian Government and the boom was already on the outlines of the piles.

Mr. MAGRATH. That has not been transferred from the map that was filed by the Shevlin-Clarke people, has it?

Col. SCHULZ. I understand it agrees with it.

Mr. MAGRATH. The map filed by the Shevlin-Clarke Co. shows at the lower end a different situation from what is shown on this map.

Col. SCHULZ. Yes; it is different on there.

Mr. MAGRATH. In furnishing us that map they claim that it shows the location approved by the Government. What we wanted on here was the location of the territory for which they have authority to construct a boom. The point I want to get at is, are they within their own territory as authorized by the provincial government as shown on Exhibit D?

Col. SCHULZ. It practically coincides, but it is not equal. This line would practically overlap and agree at most every place.

Mr. MAGRATH. Well, take it down at this lower end.

Col. SCHULZ. It does not quite agree there.

Mr. MAGRATH. At the extreme low point of the Shevlin-Clarke Co.'s boom, are those piles within their own territory?

Mr. CHAPLEAU. They go about 200 feet beyond.

Col. SCHULZ. But on the other hand they are not out as far as their permit allows.

Mr. GLENN. How far are those two booms parallel?

Col. SCHULZ. Twenty-eight hundred feet.

Mr. GLENN. Where they are parallel to each other how much open water is there between them?

Col. SCHULZ. This parallel is not the international boundary; it is 10 feet away from the boundary.

Mr. TAWNEY. What Mr. Glenn desires to know is what distance are the two booms directly opposite each other. It was testified yesterday that for 2,260 feet they were practically opposite and the open water was from 175 to 250 feet, as I recall the testimony.

Col. SCHULZ. They are about 2,200 feet.

Mr. MAGRATH. The trouble, as I see it, is we are dealing not with the authorized right that these two companies have, but with what is on the ground, and until this map shows the territory that the Shevlin-Clarke Co. are entitled to occupy I do not see that we are justified in taking these figures.

Col. BURGESS. We can put that on in 20 minutes.

Mr. POWELL. To state the matter concisely, from a point which is on the prolongation of Portage Avenue to a point which is on the prolongation of Mosher Street, both streets being in Fort Frances, the international boundary line and the line of the boom authorized by the War Department are parallel to each other, the line authorized by the War Department being 10 feet to the southward of the other.

Mr. ANDERSON. What is the area in square feet inside of the Shevlin-Clarke Lumber Co.'s boom?

Col. SCHULZ. About 4,232,000 square feet, approximately 97 acres.

Mr. ANDERSON. What is the area inside of the International Lumber Co.'s present boom?

Col. SCHULZ. 3,239,800 square feet, about 74.3 acres.

Mr. ANDERSON. What is the area in the boom for which they are now applying for permission, the amended boom?

Col. SCHULZ. 3,206,800 square feet, about 73.6 acres.

Mr. ANDERSON. What is the difference in acres?

Col. SCHULZ. Seven-tenths of an acre.

Mr. TAWNEY. What is the difference in square feet between the area of the boom as it exists now and the area of the boom as it would exist if constructed as approved by the Secretary of War?

Col. SCHULZ. 33,000 square feet larger now.

Mr. TAWNEY. The boom as approved by the Secretary of War, as I understand it, will be 33,000 square feet smaller than the present boom?

Col. SCHULZ. Yes, sir.

Mr. ANDERSON. I think that perhaps, in order to avoid any delay, we could go on and now complete our testimony, and then the change in the plan could be made afterwards, because I want to use the plan in the examination of my witnesses.

Mr. POWELL. Very well, Mr. Anderson, take your own course.

#### STATEMENT OF MR. R. CORRIVEAU, DISTRICT ENGINEER OF THE PUBLIC WORKS DEPARTMENT AT OTTAWA.

Mr. R. CORRIVEAU, after being first duly sworn, testified as follows:

Mr. ANDERSON. Your position, Mr. Corriveau, is what?

Mr. CORRIVEAU. District engineer, public works department at Ottawa.

Mr. ANDERSON. When were you last at the International Lumber Co.'s boom at Fort Frances?

Mr. CORRIVEAU. I was there during the period from the end of May to about the middle of June of 1916.

Mr. ANDERSON. That was during the portion of the flood period?

Mr. CORRIVEAU. During the highest flow.

Mr. ANDERSON. What were you there for?



Mr. CORRIVEAU. To look into high-water conditions and keep the department informed.

Mr. ANDERSON. What did you find the condition of affairs to be in the river above International Falls, above the dam?

Mr. CORRIVEAU. I found that they were having a lot of trouble in keeping the logs from blocking up the waste sluices, which interfered to some extent with their full use.

Mr. ANDERSON. Can you state in a general way just what the obstruction was and the extent of it?

Mr. CORRIVEAU. In an indirect way, I suppose, the effect of having that dangerous log jam there caused the lake to rise a couple of inches higher than it might have otherwise.

Mr. ANDERSON. Did you observe the conditions in the International Lumber Co.'s boom?

Mr. CORRIVEAU. No; I did not. I passed alongside of it, but I did not take soundings in it.

Mr. ANDERSON. Was there much timber or wood in it at the time?

Mr. CORRIVEAU. There appeared to be; yes.

Mr. ANDERSON. Did you take sufficient observation to be able to say that it was jammed or packed to the bottom in any place?

Mr. CORRIVEAU. No; I did not.

Mr. ANDERSON. What was the general condition of the channel of the river in the immediate vicinity of the booms there?

Mr. CORRIVEAU. Well, there was quite a current there. I had occasion to go up and down in a launch three or four times, and I noticed that it was rather hard to make landings at Stimson's boat-house, for instance.

Mr. ANDERSON. Were there any obstructions in the river?

Mr. CORRIVEAU. Outside the boom?

Mr. ANDERSON. Yes; outside the boom.

Mr. CORRIVEAU. There were occasionally floating logs.

Mr. TAWNEY. Would you call that an obstruction?

Mr. MIGNAULT. He did not say it was an obstruction. The question was what obstructions were there, and he said he saw floating logs.

Mr. TAWNEY. He was asked whether or not there were any obstructions, and he said occasionally there were floating logs. I asked him whether he considered that an obstruction.

Mr. CORRIVEAU. I would not consider that an obstruction where the logs were moving; no, sir.

Mr. ANDERSON. Were your observations such that you were able to form any opinion as to the effect of the International Lumber Co.'s boom in raising the water on the Canadian side of the boundary?

Mr. CORRIVEAU. Are you referring to the storage boom?

Mr. ANDERSON. Yes; to the storage boom or to any of the booms.

Mr. CORRIVEAU. No; my observations were not directed to that particularly.

Mr. ANDERSON. Toward what were your observations directed?

Mr. CORRIVEAU. Toward getting as much water past the dam as possible.

Mr. ANDERSON. I see; and it was to that that you paid most attention?

Mr. CORRIVEAU. Yes, sir.

Mr. ANDERSON. And it was there that you speak of the difficulty that was experienced by reason of the logs coming down?

Mr. CORRIVEAU. Immediately above the dam.

Mr. ANDERSON. Have you any photographs showing the position of the logs there at the dam?

Mr. CORRIVEAU. I have.

Mr. ANDERSON. Will you produce them?

(The witness thereupon produced certain photographs.)

Mr. MIGNAULT. Are you putting these in evidence, Mr. Anderson?

Mr. ANDERSON. Yes.

Mr. MIGNAULT. It would be better to have them mounted; they are rather small.

Mr. ANDERSON. Yes; they are. That is one of the objections to the photographs.

Mr. MIGNAULT. Have you duplicates of these photographs? Any exhibit ought to be filed in duplicate according to the rules.

Mr. ANDERSON. Have you duplicates of these photographs, Mr. Corriveau?

Mr. CORRIVEAU. No; these are the only copies here. Duplicates could be obtained, though.

Mr. MAGRATH. They had better be mounted in little books.

Mr. ANDERSON. Take the photographs one at a time. Mr. Corriveau, and give the dates on which they were taken.

Mr. CORRIVEAU. Here is one dated the 6th of June, 1916.

Mr. ANDERSON. What does that photograph show?

Mr. CORRIVEAU. It shows that the boom leading to the log sluices was being strained and twisted immediately below the bridge. That shows that it could not be used for its purpose.

The next one is dated the 6th of June, 1916, and shows logs and booms jammed and affecting the influence of the waste sluices.

Mr. POWELL. The logs are submerged in this one, I suppose.

Mr. CORRIVEAU. Yes, sir. The next one is dated the 10th of June, 1916, and shows the operation of moving the logs. The boom is canted in this case under water. The next one is dated June 12, 1916, and shows the operation of cutting the boom. Here is one dated the 2d of June, 1916. It shows logs and floating trash in the boom above the international bridge immediately above the dam.

Mr. POWELL. Speaking with reference to photograph No. 2, which shows the large quantity of logs above the international bridge, what became of those logs before the 6th day of June, when, according to the photograph of that date, they had disappeared?

Mr. CORRIVEAU. They had been towed upstream under great difficulties. This next view was taken on the 1st of June, 1916. It is another view of the same log boom showing a greater accumulation than there was on the 2d of June.

Mr. POWELL. They were carried down with the current. Where did they come from, these logs that are shown in the photographs?

Mr. CORRIVEAU. I would say that they came from the Shevlin-Clarke stock, as well as from the International Lumber Co. stock. They came from all over the river. It is hard to distinguish.

Mr. POWELL. Had they worked out from under their respective booms, or had they come down from the lake?

Mr. CORRIVEAU. In some cases some came down from the lakes, and in other cases they rolled from under the booms.



Mr. TAWNEY. Is it not a fact that at that time there was a big log jam just at the railroad bridge across Pithers Rapids, and is it not also a fact that these logs were coming from that jam all the time and floating down the river?

Mr. CORRIVEAU. To a certain extent. The jam was being removed at the time, and they no doubt lost a good many logs. This is a photograph dated the 1st of June, 1916, on which I have plotted the conditions of the following day, showing the quantity of logs that were successfully removed on the following day in order to reduce the jam. The jam continued to be a danger there.

Mr. MAGRATH. Did those companies engage in the removal of these logs?

Mr. CORRIVEAU. I understand they were to, but I was not able to find out whether they did or not. I saw alligators working there. I could not ascertain who was responsible for having them there.

Mr. MAGRATH. So you are not in a position to say which company was most active in this work of removing those logs?

Mr. CORRIVEAU. Well, I think in fairness to the Minnesota & Ontario Power Co. it should be stated that they were more active than anybody else in trying to reduce the obstruction.

Mr. TAWNEY. Is it not a fact that they did all the sorting, and the other company came there and got their logs and towed them up the river again into their boom?

Mr. CORRIVEAU. I was not able to ascertain that definitely, Mr. Commissioner; but, as I have just stated, I think the people who were mostly troubled with the logs were trying to do all they could to have them removed.

Mr. TAWNEY. All these photographs that you have presented here and described were taken with a view to showing the actual conditions with respect to the effect of these logs on the operation of the dam for the purpose of securing the greatest possible discharge of water at that time, were they not?

Mr. CORRIVEAU. Yes, Mr. Commissioner. This is a view taken on the 18th of June; it shows the same log jam in greater detail—a closer view.

Mr. POWELL. How many knots is that current there?

Mr. CORRIVEAU. Under the bridge it was measured, and it had a velocity of 6 miles an hour.

Mr. POWELL. It would be greater farther up?

Mr. CORRIVEAU. Yes; there is a greater slope there immediately above the dam.

Mr. POWELL. You spoke of sorting. What appliances or methods have they for sorting? I can not understand how it could be done in that rapid current.

Mr. CORRIVEAU. They could not sort at all. They did all they could to remove the logs that were there, and removed the great danger of breaking away and obstructing waste sluices. I do not know what they did when they got them farther up. It took them more than half a day with two alligators to remove any considerable number of logs from that log jam.

Mr. POWELL. How did they remove them in that swift current?

Mr. CORRIVEAU. By tying the log sticks together with cable and sacking the best way they could. There were booms, I imagine, inside those loose logs.

Mr. POWELL. I suppose they pulled them up to the alligators?

Mr. CORRIVEAU. Yes.

Mr. POWELL. And rammed loose booms around them, did they?

Mr. CORRIVEAU. I imagine the booms were there in the first place. There was a boom before the logs accumulated, and originally they would open that boom and allow logs to go through the log sluiceway which was built for that purpose, but when the current became so rapid that particular boom became unmanageable, and they were not able to use it any more.

Mr. POWELL. They took them up in groups?

Mr. CORRIVEAU. Yes.

Mr. POWELL. How did they hold them together?

Mr. CORRIVEAU. They were inside a string of booms.

Mr. TAWNEY. They had boom sticks all around the loose logs?

Mr. CORRIVEAU. Yes, sir.

Mr. ANDERSON. What would be the effect on increasing the velocity of the current by the presence of a very large accumulation of logs upon either side of the river?

Mr. TAWNEY. Do you mean on the level of the river?

Mr. ANDERSON. On the level and in the velocity, too.

Mr. CORRIVEAU. If the sections were reduced considerably, I imagine that the water would have a tendency to go up, unless the velocity were increased in proportion.

Mr. ANDERSON. From the quantity of logs in the river there, what would you say would be the effect?

Mr. CORRIVEAU. I would think it would have a tendency to increase the velocity of the current.

Mr. ANDERSON. What would you say as to raising the water?

Mr. CORRIVEAU. I have not made any calculations regarding that.

Mr. POWELL. That is a self-evident truth. If you narrow the section you increase the velocity.

Mr. ANDERSON. Go back to the outlet. The sluice gates were open, were they, at the time you were there, Mr. Corriveau?

Mr. CORRIVEAU. They were being gradually opened.

Mr. ANDERSON. What, in your opinion, would be the best way of getting the discharge there? Would you suggest closing the sluice gates for a short time or not?

Mr. CORRIVEAU. To get the most discharge you would have to open the sluice gates just as rapidly as possible.

Mr. ANDERSON. If the sluice gates had been closed for a short time would that have facilitated getting the logs up the river?

Mr. CORRIVEAU. Yes.

Mr. ANDERSON. What would you say as to whether that was a proper thing to do or not if you were regulating it the best way possible?

Mr. CORRIVEAU. Of course, it would be taking a chance. You could not decide ahead how long you would have to keep those sluice gates open. They could not be operated rapidly to begin with. They had only a makeshift method of lowering the gates. It took them quite a considerable time to raise one gate, so if it had been dropped it might have been a serious thing to obtain the same discharge again.

Mr. ANDERSON. It is a matter you would have to judge on the ground?



Mr. CORRIVEAU. Yes; and with proper operating machinery on the dam, which they had not.

Mr. GEORGE. Mr. Corriveau, I understand that you were sent to Fort Frances in May, 1916, to observe the flood conditions that then existed in Rainy Lake, Rainy River, and the Lake of the Woods district. Is that right?

Mr. CORRIVEAU. Yes.

Mr. GEORGE. And that two members of this commission were in Fort Frances at the same time that you were?

Mr. CORRIVEAU. I arrived there when they were leaving one night.

Mr. GEORGE. So that the conditions that you have given evidence about are within the personal knowledge of at least two members of the commission?

Mr. CORRIVEAU. During the time that they were there; yes; but I remained there some time afterwards.

Mr. GEORGE. You, of course, recognize the fact that these were abnormal conditions?

Mr. CORRIVEAU. I do.

**STATEMENT OF MR. S. J. CHAPLEAU, CIVIL ENGINEER, DEPARTMENT OF PUBLIC WORKS, OTTAWA, CANADA.**

S. J. CHAPLEAU, after being first duly sworn, testified as follows:

Mr. ANDERSON. What is your occupation, Mr. Chapleau?

Mr. CHAPLEAU. I am a civil engineer in the department of public works at Ottawa.

Mr. ANDERSON. What have you to do with questions such as this—the construction and maintenance of dams in navigable waters?

Mr. CHAPLEAU. Submitted plans come to me generally for suggestions prior to their approval by the chief engineer of the department of public works.

Mr. ANDERSON. Under whose directions was the plan, Exhibit D, prepared?

Mr. CHAPLEAU. There was a special appropriation made by Parliament for that survey.

Mr. ANDERSON. But I mean under whose particular directions?

Mr. CHAPLEAU. The survey was organized and carried out under my own directions by Mr. Langlois.

Mr. ANDERSON. Can you check the line of deepest water marked upon Exhibit D?

Mr. CHAPLEAU. Yes.

Mr. ANDERSON. How is it shown?

Mr. CHAPLEAU. It is shown by a dotted white line.

Mr. ANDERSON. Is the international boundary line also shown?

Mr. CHAPLEAU. Well, the boundary line is shown only at this one particular place in connection with the present application.

Mr. ANDERSON. Referring to that particular locality, in a general way how do the international boundary line and the line of deepest water correspond?

Mr. CHAPLEAU. Very closely. At some places it is on one side and at some places it runs right along the boom. At the lower end it runs practically along the boom.

Mr. ANDERSON. What do you say as to the propriety of having the line of deepest water clear for navigation purposes?

Mr. CHAPLEAU. The line of deepest water naturally marks the channel of an unimproved river, but in this particular case from one end of the boom to the other you have plenty of water for all the navigation that exists in the river there; for the whole length of the boom as it is in now on the Canadian side.

Mr. ANDERSON. Have you any suggestion to make as to where the applicant's boom shall be located with reference to the international boundary line?

Mr. CHAPLEAU. I would suggest that it would be much to our advantage to have the boom no closer to the international boundary than 100 feet south of it.

Mr. ANDERSON. Why do you suggest that, Mr. Chapleau?

Mr. CHAPLEAU. Well, if other booms are constructed on the Canadian side opposite that boom and run out to within 10 feet of the boom, as the applicant company's line shows, we would not have any room for navigation at all.

Mr. ANDERSON. You, of course, have been in this neighborhood yourself?

Mr. CHAPLEAU. Oh, yes; I have been all over it.

Mr. ANDERSON. When were you there last?

Mr. CHAPLEAU. In 1914.

Mr. ANDERSON. To your knowledge, what effect has the storage of logs in the boom, in the manner in which they have been stored, on the raising of the waters in the river or in the lake?

Mr. CHAPLEAU. It has been computed by officers of our department that the storage of logs at the upper end of the boom when solid from top to bottom has a very material effect on the level of the lake above, and also has the effect of creating a much greater current through that part of the river immediately below it than would occur if the logs there were floating logs and not stored solid from top to bottom.

Mr. POWELL. When you speak of logs in storage do you mean on both sides of the international boundary?

Mr. CHAPLEAU. This condition does not exist on the Canadian side at all.

Mr. POWELL. Then, your remarks applied to the American side?

Mr. CHAPLEAU. Yes.

Mr. ANDERSON. That is, your remarks with reference to the logs being blocked to the bottom of the river?

Mr. CHAPLEAU. Yes, sir; that is the point.

Mr. ANDERSON. What do you say as to the propriety of that in a boom on the river there?

Mr. CHAPLEAU. That is a very unfavorable condition to the river in its immediate vicinity and below.

Mr. ANDERSON. You think the logs should be kept floating?

Mr. CHAPLEAU. Yes; I do not think they should go to the bottom at all, because the situation of affairs at this particular part of the boom, when those logs are at the bottom, blocks the area of cross section over 40 per cent.

Mr. GARDNER. Does that condition exist, as a rule, during flood season?

Mr. CHAPLEAU. Well, I do not know about that. It existed when this survey was made, and I understood that it was there last year during flood conditions, although I am not sure of that.



Mr. ANDERSON. Has it any effect upon the level of the lake?

Mr. CHAPLEAU. Yes; it has a material effect on the level of the lake.

Mr. MAGRATH. To what extent?

Mr. CHAPLEAU. If I remember correctly, to raise the water about 6 inches in Rainy Lake.

Mr. MAGRATH. That would be the worst congestion that you know of on the river?

Mr. CHAPLEAU. Yes.

Mr. MAGRATH. The worst congestion that you know of has yielded a raise in the level of about 6 inches?

Mr. CHAPLEAU. That is what the computations of our officers have shown.

Mr. ANDERSON. I understand you have meteorological instruments located there at various points for the purpose of getting information and keeping records.

Mr. CHAPLEAU. Yes, sir.

Mr. ANDERSON. Has this jamming of the boom and the raising of the water had any effect, serious or otherwise, upon those instruments—upon the keeping of your records properly?

Mr. CHAPLEAU. If the International Lumber Co.'s boom is filled to the top, it has an effect on the level all the way above the International Falls dam right up to Rainy Lake. Is that what you mean?

Mr. ANDERSON. Yes.

Mr. CHAPLEAU. Our instruments are located all over. There are several at International Falls and Fort Frances and up on Rainy Lake, at both ends of Rainy Lake, and also up at Kettle Falls.

Mr. MAGRATH. You would not charge the increase of 6 inches in the lake level entirely to the booms on the American side, would you?

Mr. CHAPLEAU. Yes. I referred just to this particular part here where it is choked to the bottom. That has an effect probably of 6 inches on the lake.

Mr. MAGRATH. I understood you to say that the congestion in the river on both sides would yield about 6 inches. Some of that must be due to the Shevlin-Clarke Co.'s boom.

Mr. CHAPLEAU. The Shevlin-Clarke Co.'s boom is all over, sir.

Mr. ANDERSON. I understood Mr. Chapleau to say that the effect of the packing of the logs in the International Lumber Co.'s boom raised the level.

Mr. CHAPLEAU. Yes.

Mr. TAWNEY. But can you attribute that raise entirely to that, in view of the millions of feet of logs that are stored on the other side of the river, on the Canadian side of the boundary?

Mr. CHAPLEAU. Yes. We just consider a cross section of the river right across the lower end of the Shevlin-Clarke Co.'s boom. If you cut over 40 per cent off that section its hydraulic effect is to raise the level of the lake about 6 inches.

Mr. MAGRATH. So, you charge the increase of 6 inches in level entirely to the boom on the United States side?

Mr. CHAPLEAU. That is its effect.

Mr. GLENN. Does not the boom on the Canadian side have any effect at all upon the raising of the water in the lake?

Mr. CHAPLEAU. I suppose it must have some.

Mr. ANDERSON. He says that the raise of 6 inches is caused directly by the blocking in the International Lumber Co.'s boom. That is in addition to any raising of the water that may be caused by the existence of the other boom.

Mr. GLENN. I want to find out what are the other causes. Has the raise been simply 6 inches in the lake, or what has it been?

Mr. CHAPLEAU. A floating boom does not have any material effect, I should imagine.

Mr. POWELL. It would have if it were filled with logs.

Mr. CHAPLEAU. Well, if they filled the whole river with logs.

Mr. POWELL. To that extent you are taking substantially a foot right off the top of it.

Mr. CHAPLEAU. Put it this way: Suppose that this International Lumber Co.'s boom were full of floating logs and this boom here [indicating] were full of floating logs. The river would then be in a certain condition. The lake level would be in a certain condition. Now, you fill this part opposite the Shevlin-Clarke Co.'s boom full of logs and you block that area of cross section 40 per cent and you would raise the level here 6 inches.

Mr. POWELL. But you attribute 6 inches of rise in the lake to this action on the part of the International Lumber Co. on their side of the line. Now, what amount of rise in the lake would you attribute to the surface blocking of the boom on this side?

Mr. CHAPLEAU. I do not know. That has never been computed, sir.

Mr. ANDERSON. Now, to get back to the effect on your instruments. How does it work out so far as the instruments are concerned?

Mr. CHAPLEAU. The instruments are delicate affairs.

Mr. MAGRATH. What instruments are they?

Mr. CHAPLEAU. They are Haskell's water gauges, principally, the automatic. If this discharge section in the river [indicating] is blocked by over 40 per cent for a week or so and then it is not for a month or so, and again is blocked—I mean it does not give us the results that we should wish for.

Mr. MIGNAULT. Will you kindly say what section in the river you refer to, because, as you have stated it, the record when read will be perfectly unintelligible?

Mr. CHAPLEAU. The section across the river, at the foot of the Shevlin-Clarke Co.'s boom.

Mr. MIGNAULT. If you will kindly make a definite statement each time, even though it be a repetition, it will show exactly what you are referring to.

Mr. ANDERSON. Is there any particular instance that you have in mind when those instruments were affected by such a condition of affairs?

Mr. CHAPLEAU. Well, in this way: When the river opposite the Shevlin-Clarke Co.'s boom is blocked—

Mr. ANDERSON. You are speaking generally. I am just wondering whether there was any particular instance you have in your mind apart from the general condition caused by such blocking as you have described.



Mr. CHAPLEAU. We have had occasion to have obstructions in the river that we have had to take account of in order to reconcile the data on the gauges.

Mr. ANDERSON. There is not any particular illustration that you want to bring out to the commission showing just how it is affected any more than just the general way which you have described?

Mr. CHAPLEAU. I can not say anything more in that regard, except I might say this, that the gauges above this section opposite the Shevlin-Clarke Co.'s boom are all reading too high, higher than they would naturally do under the same meteorological conditions, precipitation, and so forth.

Mr. ANDERSON. So it puts your records out?

Mr. CHAPLEAU. It puts our records out; yes.

Mr. MAGRATH. Is that an appreciable difference that you are referring to, or is it merely theoretic?

Mr. CHAPLEAU. No, sir; it is an appreciable difference. If that obstruction opposite the Shevlin-Clarke Co.'s boom was not there we would have different readings on all our gauges, and in computing those to get the discharge flows down here [indicating] they do not give us the same results as they would if this obstruction opposite the Shevlin-Clarke Co.'s boom was not there.

Mr. ANDERSON. I see what you mean now. It is the varying discharge area that affects you; it is not that the instrument does not do its work properly?

Mr. CHAPLEAU. No; the instrument does its work properly; it is the variation of the discharge area.

Mr. TAWNEY. Mr. Chapleau, if I recall correctly, the testimony yesterday showed that this filling of the boom south of the international boundary line occurs usually—practically only—during the winter. Do you know now whether or not in the summer months, or during the season of navigation, the discharge cross-sectional area has been blocked as you have indicated; and, if so, whether it is frequent or infrequent?

Mr. CHAPLEAU. I could not answer as to whether it is frequent or infrequent, but I have seen it blocked myself, and so have our officers at Fort Frances.

Mr. TAWNEY. At what time of the year?

Mr. CHAPLEAU. I went up the river with one of the officers of the department, I think, in June, 1914, and it was blocked then.

Mr. TAWNEY. What do you mean by "blocking"—filled to the bottom?

Mr. CHAPLEAU. Filled to the bottom, I should imagine.

Mr. MIGNAULT. I suppose that condition depends on the quantity of logs stored. If there is a very great quantity, the tendency is to block the channel; or is there any other reason?

Mr. CHAPLEAU. Taking logs in that part of the boom from bottom to top opposite the Shevlin-Clarke Co. in time will block the section across the river there about 40 per cent.

Mr. MIGNAULT. They force logs under the logs that are floating on the surface?

Mr. CHAPLEAU. Yes.

Mr. TAWNEY. You say it was in June when you were there?

Mr. CHAPLEAU. I am not quite sure whether it was in June or July.

Mr. TAWNEY. What time does the season of navigation open there?

Mr. CHAPLEAU. I have not any data on that, but I should imagine it would be about the same as the rest of our northern country up here, some time about the middle of April.

Mr. TAWNEY. It does not open up there in the middle of April, does it? It is usually about the 1st of May, is it not?

Mr. CHAPLEAU. I do not know exactly the time it opens up there.

Mr. TAWNEY. If these logs are put in there in the winter, and the river is filled from the bottom to the top, and the time that you were there was only about a month after the navigation season had opened, perhaps that accounts for the blocking at that particular time.

Mr. CHAPLEAU. It might. We have no record, nor did we keep any record, of the filling or emptying of the river at that time or since we have run the office at Fort Frances. We have been established at Fort Frances since August, 1911.

Mr. TAWNEY. You stated, Mr. Chapleau, that the effect of this blocking was to raise the level of the lake 6 inches. Does that affect navigation injuriously?

Mr. CHAPLEAU. No; it does not affect navigation injuriously.

Mr. TAWNEY. It is rather beneficial, is it not, in so far as it reduces the fall over Pithers Rapids?

Mr. CHAPLEAU. Yes; quite correct.

Mr. MIGNAULT. Would that have any effect on the erosion of the banks?

Mr. CHAPLEAU. I should think that it would. The banks there are clay and sand; that is, the banks below where this blocking takes place, and the blocking has the effect of increasing the velocity of the water in the river.

Mr. MIGNAULT. And raising the water's level?

Mr. CHAPLEAU. Yes. It creates what is known as more head at this section in order to force the current by.

Mr. MIGNAULT. And that would have an effect on the banks?

Mr. CHAPLEAU. It would have more effect on the banks than it would if the blocking was not there, certainly.

Mr. ANDERSON. From the standpoint of navigation at that point and below that point what effect has it? Is it favorable or otherwise to navigation to have a swift current there?

Mr. CHAPLEAU. It is not favorable to navigation, and last summer during the flood the velocity was greater there. It was so great that it was not good for navigation.

Mr. GARDNER. Are you able to state whether that channel is blocked in the way you have indicated at more than one time during the year; that is, during the winter season when the logs are landed there?

Mr. ANDERSON. He said it was blocked in the summer time.

Mr. CHAPLEAU. This section of the river in question was made in May, 1914.

Mr. GARDNER. What I want to get at is whether or not at some season of the year they dump their logs in there until they go to the bottom of the stream and close that cross section. Now, when they use those logs does that blocking occur again?

Mr. CHAPLEAU. I do not know; I think so. My information is that when this is full they work their logs down the stream here and this railroad, which runs right on the shore there, brings up



more logs, and they keep throwing them in from the train and gradually they work their way down to the mill.

Mr. GARDNER. What I am curious about now is whether or not they continue to dump their logs in there in such quantities during the entire season that they fill the channel to the bottom of the river.

Mr. CHAPLEAU. I do not know about the entire season, sir. I could not say anything about that.

Mr. TAWNEY. Mr. Chapleau, you stated that in your judgment the boom on the American side ought to be at least 100 feet from the international boundary.

Mr. CHAPLEAU. That is my opinion; yes, sir.

Mr. TAWNEY. With that 100 feet what would be the width of the channel in the river?

Mr. POWELL. Under existing circumstances?

Mr. TAWNEY. No. If the boom were moved back south to within 100 feet of the boundary, what would be the width of the open water or channel in the river from there north to the northern bank?

Mr. WYVELL. Do you mean the Shevlin-Clarke Co.'s boom?

Mr. TAWNEY. No; I mean between the International Lumber Co.'s boom and the north bank of the river.

Mr. CHAPLEAU. It would be 600 feet, if the boom were placed south of the international boundary.

Mr. TAWNEY. If the boom were placed south of the international boundary 100 feet, the open water would be 600 feet.

Mr. CHAPLEAU. About 600 feet.

Mr. TAWNEY. Is it proposed by anyone at this time to utilize any part of the open water north of the boundary line or on the Canadian side for anything other than navigation?

Mr. CHAPLEAU. Yes; I understand that the paper company operating on the Canadian side is very desirous of getting booming privileges up that whole shore, up to the Shevlin-Clarke Co.'s boom.

Mr. TAWNEY. Is there any application of that kind pending in your department?

Mr. CHAPLEAU. Not in our department; no. Booming privileges have got to be arranged some way to aid this plant. They have not any room at all up here on the Canadian side. They can not get it for some reason of their own which I do not know of.

Mr. TAWNEY. Assuming, now, that is not there, until there is necessity for the consideration of an application for that purpose, with the boom of the International Lumber Co. located as proposed you would have 500 feet of open water in the river for navigation purposes?

Mr. CHAPLEAU. Yes.

Mr. TAWNEY. That is the only purpose for which it would be used unless an application were granted for a boom on that side?

Mr. CHAPLEAU. Yes, sir.

Mr. ANDERSON. You mean, Mr. Chapleau, at a certain point, because it is not all the way. You mean below the Shevlin-Clarke Co.'s boom: it is limited to that?

Mr. CHAPLEAU. Just below the Shevlin-Clarke Co.'s boom.

Mr. TAWNEY. From the Shevlin-Clarke Co.'s boom down to the dam, or near the dam.

Mr. CHAPLEAU. Well, it would be up to 500 feet; at some places it would be 450 feet.

Mr. MIGNAULT. Of course, you would not know whether any water lots have been granted to private individuals or to companies on the Canadian side?

Mr. CHAPLEAU. I know that the town of Fort Frances claims to the bottom of the river right out to the international boundary as their territory.

Mr. MIGNAULT. But any application for water lots would not go through your department?

Mr. CHAPLEAU. No, sir.

Mr. MIGNAULT. Such an application would go to the Ontario government?

Mr. CHAPLEAU. It would go to the Ontario government.

Mr. TAWNEY. The open water between the two booms, the boom of the Shevlin-Clarke Co. and the boom of the International Lumber Co., as I understand it, is 175 to 250 feet at this time under existing conditions. What would it be if the International Lumber Co.'s boom were located as proposed?

Mr. CHAPLEAU. As proposed in the application?

Mr. TAWNEY. Yes. What would be the open water then, assuming that the Shevlin-Clarke Co.'s boom is constructed in accordance with the limits fixed by its permit?

Mr. CHAPLEAU. They would not be closer together than 300 feet. There would be 300 feet between the two booms.

Mr. TAWNEY. There would be 300 feet of open water between the two booms?

Mr. CHAPLEAU. At the closest place.

Mr. TAWNEY. Is that or not sufficient for navigation purposes for the navigation that there is on that river?

Mr. CHAPLEAU. That is plenty for navigation now—that is, under the present conditions, sir.

Mr. TAWNEY. I asked the question as to what the open water would be if the boom of the International Lumber Co. is constructed in accordance with the plans approved by the Secretary of War.

Mr. CHAPLEAU. Three hundred feet. That is the closest they are together.

Mr. TAWNEY. Is that sufficient for all navigation purposes on the Rainy River at that point?

Mr. CHAPLEAU. Yes; it is quite sufficient.

Mr. ANDERSON. Where you have measured, how far inside the international boundary line is the line of the International Lumber Co.'s boom?

Mr. CHAPLEAU. Well, it varies.

Mr. ANDERSON. Take it at the point where you measured it, the point in connection with which you gave Mr. Tawney the 300 feet.

Mr. CHAPLEAU. The International Lumber Co.'s boom as proposed and the Shevlin-Clarke Co.'s boom are practically parallel, while the international boundary goes through that diagonally.

Mr. ANDERSON. Mr. Tawney asked you what the distance was between the booms at the present time. Now, I am asking you how far inside the international boundary is the line of the International Lumber Co.'s boom, at that point where you measured?

Mr. CHAPLEAU. Two hundred feet.

Mr. TAWNEY. If below the Shevlin-Clarke Co.'s boom in the Rainy River the open water available for navigation is from 450 to 500



feet, what would be the necessity of moving the International Lumber Co.'s boom back 100 feet, if the water on the other side is now used only for navigation purposes?

Mr. CHAPLEAU. For the reason that if these mill interests at Fort Frances are granted booming rights in the river up as far as the Shevlin-Clarke Co., all the navigation would be practically on the Canadian side, unless the applicant's boom were put 100 feet south of the boundary line. Then we could approve plans for a boom that would go out to 100 feet up to the line and give a 200-foot channel in between.

Mr. TAWNEY. If, as you say, hereafter it is desired to locate a boom there you would do that, but when that time comes that application would have to come before this commission the same as this one. The commission could then take into consideration the moving of that boom south 100 feet. Therefore, it would be permitting the International Lumber Co. to utilize that for storage purposes which, according to the testimony, is absolutely necessary, without any injury or inconvenience on the Canadian side unless, in the future, a boom is desired on that side, in which case the permit of the International Lumber Co. could be so modified as to require the moving back of that boom 100 feet from the line for that purpose. In other words, your judgment that this ought to be moved back 100 feet is based upon a possibility that at some time in the future your Government, or the interests in Canada, may desire to utilize a certain portion of your side for storage of logs or lumber in connection with the operation of this mill at Fort Frances?

Mr. CHAPLEAU. Yes.

Mr. TAWNEY. When that condition arises this company could be required under its permit to move the boom back. Would not that answer your purpose?

Mr. CHAPLEAU. Yes, sir.

Mr. MIGNAULT. Mr. Chapleau, entirely irrespective of any question of locality of a boom on the Canadian side, would there be any objection to the navigation of the river being mainly on the Canadian side?

Mr. CHAPLEAU. No, sir; I can not see any objection to navigation being either on one side or on the other side.

Mr. POWELL. That is from the navigation standpoint?

Mr. CHAPLEAU. Yes.

Mr. MIGNAULT. Would there be any question of danger of erosion of the banks if the navigation were on one side of the river?

Mr. CHAPLEAU. I do not think navigation running between the international boundary and the Canadian shore would have any material effect on washing the banks.

Mr. MIGNAULT. That is one of the points raised by Fort Frances, that having the navigation exclusively on their side of the river has a prejudicial effect on the banks and causes erosion. You would not consider that as a grievance?

Mr. CHAPLEAU. No; I do not think so, sir.

Mr. TAWNEY. Mr. Chapleau, the city of Fort Frances fronts all along on Rainy River there, does it not?

Mr. CHAPLEAU. Yes, sir.

Mr. TAWNEY. The opportunities for utilizing the river for navigation purposes are much better on the Canadian side, opposite Fort Frances, than they are on the American side, are they not?

Mr. CHAPLEAU. Yes; navigation is entirely on the Canadian side.

Mr. TAWNEY. The city of International Falls does not front on the river for any great distance, does it?

Mr. CHAPLEAU. No, sir. I do not know where the corporation line is, but it is only adjacent to the river immediately above the big power dam.

Mr. TAWNEY. All of the interests, therefore, that utilize the river for navigation, or practically all of them, are on the Fort Frances side of the river—that is, as far as pleasure boats and the dockage and piers are concerned.

Mr. CHAPLEAU. The river front is mainly on the Canadian side, but International Falls has its own dock at the foot of Second Street.

Mr. TAWNEY. So that if a boom were constructed on the Canadian side it would be absolutely necessary to have navigable open water between the shore and the boom. Otherwise, the navigation of Fort Frances would be cut off from getting into the river at all. Would not that be true?

Mr. CHAPLEAU. That would be a fact; they would be cut off from the river.

Mr. TAWNEY. An application that would produce that result would not be very likely to receive the approval of the Canadian Government unless there was an opportunity for the people interested in navigation on the river on the Fort Frances side to get into open water.

Mr. CHAPLEAU. They would have to make provision for getting out to the navigable channel.

Mr. TAWNEY. Just as you have made provision above in the Shevlin-Clarke Co.'s boom.

Mr. CHAPLEAU. Something of that nature; yes, sir. Some provision would have to be made.

Mr. TAWNEY. Some provision would have to be made in any event if a boom were located on that side.

Mr. CHAPLEAU. Yes, sir.

Mr. ANDERSON. What would that provision be? Would it be such as it is here, or would it be something in the way of openings in the boom?

Mr. CHAPLEAU. We have not given the matter any particular study as yet, but if a boom were granted on the Canadian side opposite Fort Frances it would have to be trestled out to a wharf outside the line of the boom.

Mr. ANDERSON. So that the navigable portion in reserve would be outside the boom?

Mr. CHAPLEAU. The navigable portion in reserve would be outside the boom.

Mr. ANDERSON. It has been suggested, and no doubt it is quite true, that Mr. Backus's booming space is limited, but is there any reason from a physical standpoint why his boom can not be extended up the river?

Mr. CHAPLEAU. There is no reason why it should not go up to Pithers Rapids.



Mr. POWELL. With reference to this 6 inches raising of the level of Rainy Lake, that, as I understand you, would be the result of a permanent obstruction such as at times exists in the international boom?

Mr. CHAPLEAU. I do not exactly understand.

Mr. POWELL. You say that your officers made a computation that the effects of the obstruction to the flow of the stream by the piling of the logs in the international boom would be an increase in the height of the water of Rainy Lake 6 inches?

Mr. CHAPLEAU. Yes.

Mr. POWELL. Were they speaking of a natural rise of water consequent upon that, or was it a potential rise due to the permanent obstruction in that way?

Mr. CHAPLEAU. It was only a calculated rise.

Mr. POWELL. On a permanent obstruction?

Mr. CHAPLEAU. Yes.

Mr. POWELL. That did not mean that if it were obstructed for two or three weeks it would cause a rise of 6 inches?

Mr. CHAPLEAU. I do not know what period of time.

Mr. POWELL. I think they calculated on a permanent cutting down of the section; otherwise, it could not be.

Mr. MIGNAULT. I do not know how it could not be on account of the temporary rise.

Mr. POWELL. That means a rise of the level of 6 inches of the whole lake, and there would not be enough to cause it.

Mr. MIGNAULT. If the obstruction remained long enough it would cause a rise——

Mr. POWELL. Yes. I am asking if that is not based on a permanent obstruction?

Mr. CHAPLEAU. It is, in a sense. If the river was flowing free and you suddenly put in that obstruction it would take a period of time—I do not know how much, two or three weeks or a month—to create that condition of a rise of 6 inches in the river, and if you immediately took it out it would take a certain period of time to get it back again.

Mr. MIGNAULT. To cover the whole space?

Mr. CHAPLEAU. Yes.

Mr. GARDNER. Do you think it would affect the lake's level 6 inches in a month's time?

Mr. CHAPLEAU. I do not know.

Mr. POWELL. It would strike me, rather, that it was based upon a permanent condition of obstruction of the section of the river; otherwise you would have to have the time required to do it, and that would depend upon the precipitation, and goodness knows what. It would be a difficult problem to work out.

Mr. MIGNAULT. Assuming it was not upon a permanent obstruction, it would at least be a disturbing factor in the regulation of the level of Rainy Lake?

Mr. CHAPLEAU. It would be that.

Mr. MIGNAULT. From nothing up to 6 inches?

Mr. CHAPLEAU. Yes.

Mr. MURRAY. I understood you to say that you had not been in Fort Frances in wintertime?

Mr. CHAPLEAU. No.

Mr. MURRAY. Do you know as a fact, from information, that very little ice forms in the Rainy River at any time and the river is open very early in the season?

Mr. CHAPLEAU. I do not know anything about that.

Mr. MURRAY. I did not quite understand your statement with reference to the distance between the authorized boom of the Shevlin-Clarke Co. and the boom as applied for according to the plan with the War Department. As I gather from the brief filed by the Shevlin-Clarke Co. they are at the present time 135 feet north of the international boundary; is that not right?

Mr. CHAPLEAU. The Shevlin-Clarke Co. is north of the international boundary only 100 feet at one place.

Mr. TAWNEY. That is between the Shevlin-Clarke boom and the international boundary.

Mr. MURRAY. Yes. This proposed boom of the applicant is only 10 feet south of the international boundary.

Mr. CHAPLEAU. That is a good deal farther down the river?

Mr. MURRAY. Not at that point.

Mr. CHAPLEAU. It is not opposite the Shevlin-Clarke boom at all.

Mr. MURRAY. That is where I do not understand your answer. Then, at this particular point where the Shevlin-Clarke boom approaches nearest the international boundary, what is the distance between it and the proposed boom of the applicant?

Mr. CHAPLEAU. The distance between it and the proposed boom is 300 feet.

Mr. MURRAY. And then where the boom approaches nearest to the international boundary there is no corresponding proximity of the Shevlin-Clarke boom?

Mr. CHAPLEAU. No.

Mr. MURRAY. The distance is much greater?

Mr. CHAPLEAU. Yes.

Mr. MURRAY. That map from which you have taken your measurements indicates the actual boom and not the authorized one.

Mr. CHAPLEAU. They are both plotted.

Mr. TAWNEY. My questions were directed to the proposed boom or the boom as planned or approved by the Secretary of War and your evidence was given in answer to that question.

Mr. CHAPLEAU. Yes.

Mr. MURRAY. I understand the Shevlin-Clarke boom is marked or plotted there?

Mr. CHAPLEAU. Well, I have just told you the distance of the Shevlin-Clarke boom as built——

Mr. MURRAY. Taking the authorized boom down to the dam in that wide space——

Mr. CHAPLEAU. If you want the distance between the Shevlin-Clarke boom as authorized and the proposed boom of the International Co. you will have to plot it.

Mr. MURRAY. I wanted to ascertain how wide the channel would be, provided the parties exercised their legal rights?

Mr. CHAPLEAU. I can give you that later.

Mr. MURRAY. Have you the record showing that an application has already been made by the Minnesota & Ontario Power Co. for boomage rights along the Canadian shore from the bridge up to Portage Avenue.



Mr. CHAPLEAU. Yes: there was an application made by the Ontario & Minnesota Power Co. I think it was for a boom immediately above the waste canal, and it met with the approval of the public works. That is the last I have heard of it.

Mr. MURRAY. I understand, and the fact is, that the town consented to the boom as far as the eastern limit of Mowatt Street opposite the ferry.

Mr. MAGRATH. From where?

Mr. MURRAY. As far down toward the dam as they liked.

Mr. CHAPLEAU. From the waste gate, from the waste canal here we approved of a boom to run up to the foot of Portage Avenue.

Mr. MAGRATH. Whereas the town only approved of it to Mowatt Street.

Mr. MURRAY. Up to the ferry dock.

Mr. MAGRATH. And Mr. Backus stated that that length of boom would be of no service to them.

Mr. MURRAY. That is what he said. The river there appeared to be about as wide as farther up—that is, opposite Shelvin-Clarke.

Mr. CHAPLEAU. Yes.

Mr. GEORGE. Do I understand that your answer to Mr. Murray's question in respect to the application of the Ontario & Minnesota Power Co. for booming privileges has been granted by the public works department?

Mr. CHAPLEAU. It was reported favorably upon by my office.

Mr. GEORGE. But as a matter of fact, do you not know that the public works department have not granted the necessary power to construct the boom?

Mr. CHAPLEAU. I do not know about that.

Mr. MURRAY. You are simply speaking as far as your department is concerned within the public works department?

Mr. CHAPLEAU. Yes.

Mr. GEORGE. So that the higher authority of the minister of public works had not been granted, to your knowledge?

Mr. CHAPLEAU. Not to my knowledge.

Mr. GEORGE. And do you not know that the town of Fort Frances refused to approve of the plan to the same extent as you did?

Mr. CHAPLEAU. Only by hearsay, that is all.

Mr. GEORGE. You hold an advisory position to the public works department, as well as being district engineer for that part of Canada which takes in the Rainy River?

Mr. CHAPLEAU. My position is that of district engineer on the St. Lawrence division. I am attached to the engineer's office.

Mr. GEORGE. I understand you are called upon to advise on all applications coming within the territorial division of which you are chief engineer?

Mr. CHAPLEAU. I am not chief engineer. I am district engineer. I am asked to report on such applications.

Mr. GEORGE. And the application of the Shevlin-Clarke Co. for the boom in the Rainy River came before you some years ago?

Mr. CHAPLEAU. Yes.

Mr. GEORGE. And I understand in the interests of Canada, and I presume on the grounds of public interest, you approve of their application for booming rights in this river?

Mr. CHAPLEAU. I recommended the approval of their boom.

Mr. GEORGE. Am I right in assuming that there is no objection to the granting of this application, in so far as the interests of the applicant company and their allied companies are concerned, by your department?

Mr. CHAPLEAU. I think that has all been brought out in evidence in answer to Mr. Tawney's questions.

Mr. GEORGE. But is that right?

Mr. CHAPLEAU. As far as the navigation interests are concerned, and that sort of thing, it does not appear to be reasonable for us to deny the recommendation of the applicant?

Mr. MAGRATH. That is this boom you are speaking of up to Portage Avenue?

Mr. GEORGE. No; the work applied for; so that it is only a question of preserving the navigable rights?

Mr. CHAPLEAU. Yes; I think that has been fairly brought out.

Mr. ANDERSON. That is the position of the Government, as I stated yesterday.

Mr. GEORGE. And, in so far as the present conditions are concerned, the granting of the approval by this commission of the plans as filed will not materially affect navigation. Is that right?

Mr. CHAPLEAU. As filed, they will not materially affect navigation.

Mr. GEORGE. I take that from your report to the chief engineer of the public works department, Mr. Lafleur?

Mr. CHAPLEAU. Yes.

Mr. GEORGE. Your department has a permanent engineer located at the town of Fort Frances?

Mr. CHAPLEAU. We have an observation officer there.

Mr. GEORGE. Who is there permanently all the year around?

Mr. CHAPLEAU. Either he or somebody else.

Mr. GEORGE. And I believe the observations as to the levels are taken not only at the dam of the Ontario & Minnesota Power Co., but also at Ranier bridge?

Mr. CHAPLEAU. Yes; the levels are taken all the way from Kettle Falls to the Lake of the Woods.

Mr. GEORGE. So that the difference in the level between the water at the dam and the water at Ranier is available for this commission as it existed at any time during the past few years?

Mr. CHAPLEAU. Yes; since August, 1911.

Mr. GEORGE. In normal times what is the difference between the level of the water at the company's dam and Ranier bridge?

Mr. TAWNEY. You mean the railroad bridge?

Mr. GEORGE. Yes; where they take their observation and have their testing instruments.

Mr. CHAPLEAU. It varies considerably, but I do not think it is ever more than a foot or a foot and a half.

Mr. TAWNEY. You say the fall from the Ranier bridge to the international dam is a foot and a half?

Mr. CHAPLEAU. I imagine at times it would be a foot and a half. I can not say exactly what it is, but we have the record.

Mr. GEORGE. It all depends, does it not, upon the conditions of the water's level in the Rainy Lake and its upper tributaries?

Mr. CHAPLEAU. It depends upon the discharge through the dam and section.

Mr. TAWNEY. It would depend somewhat on the wind's effect, too.



Mr. MIGNAULT. While you are making a point on that, would you have him state what is the average difference of level between the dam and the Ranier bridge?

Mr. CHAPLEAU. I presume it would vary.

Mr. GEORGE. That is what I was trying to get at.

Mr. MIGNAULT. So far as Mr. George might consider material it might be stated here.

Mr. GEORGE. What, then, Mr. Chapleau would be the average difference in the level of the waters at Rainy Lake and the waters at the dam?

Mr. CHAPLEAU. It would be less than a foot average.

Mr. GEORGE. When you are speaking now you are speaking in reference to the record which has been kept by your department, from observations made by your departmental engineer?

Mr. CHAPLEAU. Yes.

Mr. GEORGE. Is it upon those records that you base your calculations that there is a rise in the water of 6 inches owing to the operation of the boom at the upper end such as you have described?

Mr. CHAPLEAU. I do not know.

Mr. MIGNAULT. I might state how he did it. It was by a calculation of the effect of blocking the cross section.

Mr. GEORGE. I wanted to bring out this point: That the estimate was not based on an official record.

Mr. MIGNAULT. No; he made it perfectly clear how he arrived at that estimate. It was by deducting the cross-section river flow. It was taken out and diminished the area of discharge, which would have the effect of raising the water in Rainy Lake so much. It was merely a computation.

Mr. GEORGE. Your testimony in this respect is, I presume, given as a result of the investigation and report of Mr. Langlois, a former witness, who was sent by your department in the month of May, 1914, to take the level of the river at the point where the applicant company's dam is situate.

Mr. CHAPLEAU. Mr. Langlois's duties were to plot the whole section, make a plan of it—a complete plan.

Mr. GEORGE. Is your evidence given as a result of his observation and report to you?

Mr. CHAPLEAU. No; he has not had anything to do with the meteorological question, or the flow—

Mr. GEORGE. But is your evidence given with respect to the piling of the pulp wood down to the bottom of the river—

Mr. CHAPLEAU. He shows that condition on his plan.

Mr. GEORGE. Is your evidence given to-day as a result of his report to you?

Mr. ANDERSON. At what point?

Mr. GEORGE. On the point as to the filling in of the river with pulp wood from the shore out to the outer boom.

Mr. CHAPLEAU. It is shown on the plan.

Mr. POWELL. The area is delimited here over which the logs are piled solidly.

Mr. GEORGE. Mr. Langlois said he was there in the spring of 1914, when he spoke of the conditions which existed from his own observations, and the point which I shall make is that the evidence of the present witness is simply based on a former witness's at that time.

Mr. CHAPLEAU. Not entirely. I have seen the condition existing there myself.

Mr. TAWNEY. I understood him to say he was there in June. What year?

Mr. CHAPLEAU. In June, 1914.

Mr. GEORGE. So that your evidence with respect to the filling of the river at this particular point of the boom only referred to the particular time of the year when Mr. Langlois made his observation?

Mr. CHAPLEAU. I know they must have existed when Mr. Langlois made his observations, but I tried to make it clear before that we had not tried to keep any record of when the river was full and when it was empty in that place.

Mr. GEORGE. Assuming your statement is correct that the river is raised 6 inches by reason of the river being filled within the boom with pulp wood at the cross section opposite the Shevlin-Clarke mill, what would be the result below this particular part of the boom in the river? If it is raised above, what is the condition below?

Mr. CHAPLEAU. You can get a greater velocity of discharge, and you would have to make the lake discharge past that section.

Mr. GEORGE. Would the level of the river be lower?

Mr. CHAPLEAU. I am not quite sure. I have not looked at the data about that.

Mr. GEORGE. If it is the result of a certain condition of obstruction above, would it not follow that it is lower below?

Mr. CHAPLEAU. Not necessarily.

Mr. GEORGE. It is also suggested in the statement made to the commission yesterday that the difficulty in granting this application might be got around by the lengthening of the boom and the lessening of the width, and I believe you stated in evidence this morning that that plan was feasible. Is that correct?

Mr. CHAPLEAU. Yes. Mr. Anderson asked me the question if the outside line at present of the applicant boom could be extended farther upstream, and I said I could not see any reason why it should not.

Mr. GEORGE. You have not taken into account, I presume, the difficulty in acquiring the shore right along there?

Mr. CHAPLEAU. No.

Mr. GEORGE. And do you know, as a matter of fact, that immediately above where the boom is now situate that the town of International Falls is subdivided, and there are numerous owners to the different narrow shore lots?

Mr. CHAPLEAU. No; I do not know that. It is not shown on this plan. Just the main road is shown.

Mr. ANDERSON. I thought it was suggested the town of International Falls did not extend farther up—

Mr. GEORGE. I think that impression is wrong, and for that reason I will have to recall Backus. In speaking of any prospective application for booming privileges on the Canadian side opposite the boom of the applicant company, I presume that you refer to the booming rights that may be asked for from your department by the Fort Frances Paper & Pulp Co.?

Mr. CHAPLEAU. Yes.

Mr. GEORGE. You did not have in mind any other prospective application?

Mr. CHAPLEAU. No; the paper interests at Fort Frances.



Mr. MAGRATH. In approving the application for booms by your department, do you put in any proviso that the logs within the area granted are not to be allowed to go to the bottom and block the channel?

Mr. CHAPLEAU. I have never had that condition come before us.

Mr. MAGRATH. So that you do not take that into consideration?

Mr. CHAPLEAU. I can not at the present time.

Mr. MAGRATH. Then, you say there has been approval granted for a boom on the Canadian side up to Portage Avenue?

Mr. CHAPLEAU. I recommend the approval of a boom up to the foot of Portage Avenue above the waste gate, but when I recommended the approval of the boom and stated its limitations by metes and bounds I did not put in any proviso against having logs in the bottom, because the condition did not occur to me at the time. This map was not available at that time. It was only being plotted.

Mr. MAGRATH. Then, Mr. George has been drawing your attention to the extension of this boom upstream, and the territory above being subdivided. Could that be overcome in the same way as it appears to have been overcome on the Canadian side by a water lane?

Mr. CHAPLEAU. Yes; there is no reason why we should not put a water lane there the same as here. This is only for small boats.

Mr. ANDERSON. In the light of your experience gained by what has taken place in this application, in future when applications for approval of booms are made to your department, would you take into consideration the question of piling logs solid to the bottom, and would you make a condition limiting that?

Mr. CHAPLEAU. I would; certainly.

Mr. POWELL. Something was said about the capacity of the stream for navigation. I have just remarked that the line of deep water there indicates a channel that is sufficient to take the largest vessels of the Allan and C. P. R. lines up and down that river?

Mr. CHAPLEAU. Yes.

Mr. POWELL. Over 30 feet?

Mr. CHAPLEAU. Yes.

#### STATEMENT OF MR. W. J. STEWART, HYDROGRAPHER FOR THE DOMINION GOVERNMENT.

W. J. STEWART, being duly sworn, testified as follows:

Mr. ANDERSON. What is your position with the Dominion Government?

Mr. STEWART. I am hydrographer for the Dominion Government and engineer in connection with these applications.

Mr. ANDERSON. Would you state to the commission what your position is with reference to this application?

Mr. STEWART. On this application and the question before the commission I have very little personal knowledge. I have been up and down the river on two or three occasions, but on looking into the question of the effect of this boom on the levels of the river and the lake, I was struck by the fact, as shown on the blue print submitted by the engineer of the department of public works, that the logs had been piled in there right down to the bottom of the stream.

The effect of this blocking is simply putting a wing dam in the river. Such a wing dam, of course, will affect the level. It retards the flow first of all. That water that is held back goes back to the lake, and raises the level, and increases the velocity until such times as the new section is able to take care of the inflow to the lake. I took some sections from the plot of the blue print marked "Exhibit B." This is the same one, except for the addition Mr. Chapleau and Col. Schulz put on this morning. I calculated the area of three sections, one about abreast of the lower end of the Shevlin-Clarke boom, another one farther up the stream, and another about abreast of the small bay on the American side at International Falls.

Mr. TAWNEY. It is not at International Falls.

Mr. STEWART. The town of International Falls is on the Minnesota side.

Mr. POWELL. It shows it on the map.

Mr. TAWNEY. I was thinking it was in the vicinity of Ranier.

Mr. STEWART. Oh, no. It is substantially opposite the Shevlin-Clarke place, and the third section at the downstream entrance to the small creek running through International Falls. With the water at 498 in the river—that would be a little less than 498 at the bridge—

Mr. TAWNEY. Public works data?

Mr. STEWART. Yes.

Mr. POWELL. Four hundred and ninety-eight at this point—there is no appreciable difference.

Mr. STEWART. No. The area of the eastern section is 29,100 square feet.

Mr. MIGNAULT. That is the downstream section.

Mr. STEWART. The upstream section.

Mr. POWELL. The unobstructed area of that section. The middle section is 24,400 and the western section is 25,200. The area inside of the boom of the International Lumber Co. on the eastern section is 13,000 square feet, in the middle section 8,500, and in the western section 17,100, leaving the area in the open channel 8,200 in the eastern section, 9,000 in the middle section, and 8,100 in the western section.

Mr. MIGNAULT. That is the area cross section?

Mr. STEWART. Yes. One is the area in the river unobstructed and the other is the area outside of the boom.

Mr. TAWNEY. Unobstructed?

Mr. STEWART. Well it might be obstructed or it might not. When you come to talk about the obstruction, it shows what the obstruction would be.

Mr. POWELL. The result of that is that the obstruction through the logs, when the boom is filled with the logs, is about two-thirds of the total flow.

Mr. STEWART. About two-thirds as shown by these figures. Last spring, during the freshet, a discharge measurement was made, giving a discharge of 37,700 cubic feet a second, the velocity through this portion of the river at that time would have been—

Mr. POWELL. What do you mean by this portion?

Mr. STEWART. The velocity through the river in that vicinity of where the boom is—

Mr. POWELL. To the north of their boom?



Mr. STEWART. No; supposing there had been no obstruction in the river at all, it would have been 1.4 per second; with the channel obstructed by the boom the velocity would have been a little over 4 feet per second.

Mr. MIGNAULT. When you say obstructed you mean the boom filled with logs?

Mr. STEWART. Yes. I think Mr. Backus admitted yesterday the boom was filled with logs last spring. I understand it is not filled with logs at the present time. There are comparatively few logs there. The effect of this increase in velocity, or, rather, the effect of the obstruction is to increase the velocity, and the water here had to rise—

Mr. POWELL. Where?

Mr. STEWART. In the upper portion of the river. It had to rise a certain amount to increase the velocity sufficiently to pass the amount of water that was required. I compute that it would raise the water in the upper portion of the river about from 4 to 5 inches, and in the lake that would mean a little bit less, on account of the Pithers Rapids. The slope there would take part of the rise out, and the lake would raise between 3 and 4 inches as a result of that obstruction.

Mr. GARDNER. At the mouth of the lake?

Mr. STEWART. The lake all over is pretty nearly the same level.

Mr. POWELL. What do you say would be the rise in the lake?

Mr. STEWART. Between 3 and 4 inches.

Mr. MIGNAULT. Assuming 498 at the point you have described, and assuming that the boom of the International Lumber Co. were full of logs, what would be the level of Rainy Lake, taking into account the difference of level between the points where you have taken your cross section and the lake itself?

Mr. STEWART. About 499.7.

Mr. MAGRATH. Of which 0.3 or 0.4 is due to this blockade.

Mr. STEWART. Due to this blockade. The blockade is a matter that can not be observed. It is partially from observation and partially from computation. You have to know what the inflow to the lake is and the discharge and the various levels. It nearly always has to be computed. You can not see it on the gauge. You can not tell.

Mr. MIGNAULT. I presume no actual levels were taken to determine the effect of such blockade. In other words, it is merely a matter of calculation, assuming this cross section were filled with logs, then the effect on the level of Rainy Lake would be so many inches?

Mr. STEWART. That is it.

Mr. MIGNAULT. There were no actual levels taken.

Mr. STEWART. You could not tell it from actual observation.

Mr. POWELL. I suppose you treat the flow through the interstices of the logs to be a negligible quantity.

Mr. STEWART. It would be a negligible quantity on account of the length. They are pretty nearly all stopped up. In the computation we assumed it was a complete stoppage. It might not be quite so much.

Mr. MAGRATH. You heard Mr. Chapleau's evidence?

Mr. STEWART. Yes.

Mr. MAGRATH. Do you agree with him that the Shevlin-Clarke boom has no appreciable effect upon the levels of the lake?

Mr. STEWART. My information about the Shevlin-Clarke boom is that all the logs are afloat. If they are afloat the reduction in cross section from the thickness of a log on that area would be very, very slight.

Mr. TAWNEY. The cross-section area would be reduced also, would it not, by the boom piles—the clusters of boom piles?

Mr. STEWART. In the Shevlin-Clarke case they are only single piles, not like the Niagara Power Co., where there are clusters. There are only single piles here.

Mr. MAGRATH. I thought they were clusters, the same as the others.

Mr. STEWART. No; they are all singles.

Mr. TAWNEY. Would it have any particular effect—

Mr. STEWART. It would have a theoretical effect—it was quite slight. In the case of the Watrous Island Boom Co. and the International Boom Co. the piles are in clusters. You see on the plan the number of logs. In one case there are 67 piles in one cluster, whereas in the other there is only 1.

Mr. ANDERSON. What position do you take with reference to the portion of the river to be reserved for navigation.

Mr. STEWART. If it became necessary to place the boom on the Canadian side it is my opinion that there should be a channel at least 200 feet wide left between the two booms, or one on each side; that is to say, we would have just as much right to a passage on our side as the other, and the booms should be moved back 200 feet.

Mr. ANDERSON. Do you or do you not agree with Mr. Chapleau that until that condition arises there is no substantial objection to the utilization of the river south of the international boundary for the purposes for which it is now being used, or will hereafter be used when the boom is reconstructed as approved by the Secretary of War, for the purpose of supplying the milling interests of both sides of the river? In other words, do you agree with him that the necessities of navigation would not be affected—that there is open water enough there now to meet all the requirements of navigation?

Mr. STEWART. There is open water there enough at the present time. I would like to point out that I do not know whether your order can be made in such a form—that is a matter for the legal men to decide—whether that boom can be moved back.

Mr. ANDERSON. If the commission should conclude to grant the approval of the plans as approved by the Secretary of War on the condition that the other side of the river was to be similarly utilized, that in that case the boom could be moved south for that purpose, there would be no objection to that?

Mr. STEWART. If your order can be framed in such a shape that it will delay any action on the Canadian side I would favor the approval of that boom as it is, with this proviso, that I think protection work should be put on the Canadian side. The American side is thoroughly well protected from any wash or any action even of the strong currents. There is no wash on the American side. The land has not been washed in. On the Canadian side it has to sustain the wave action from the fast launches which run up and down there and tugs and the increased flow brought about.



Mr. ANDERSON. If there was a protection on the Canadian side opposite the International Lumber Co.'s boom, there would have to be a line between that boom and the shore to accommodate the navigation interests of Fort Frances.

Mr. STEWART. Yes; there is considerable navigation of small boats along there, and they should not be deprived of the privilege of landing.

Mr. ANDERSON. Otherwise they could not come in.

Mr. STEWART. No.

Mr. ANDERSON. In that case a boom would just operate as protective work to the shore, would it not?

Mr. STEWART. Yes; it would.

Mr. MAGRATH. Mr. Backus stated yesterday, as I understood him, that that shore would be protected by him some time during the present season.

Mr. STEWART. I understood the same thing. I think that would be very necessary, as I know from viewing the shore. I have walked up there once or twice, one day with the chairman of the American section and we saw a considerable amount of washing had taken place.

Mr. MAGRATH. If this boom should be established as you indicate, and a lane left up along the shore, would not that aggravate the erosion by navigation that you speak of?

Mr. STEWART. I think the boats in that case, in confined water like that, would go slower. It would not be quite so bad, and it would not have the strong current and there would not be so much navigation as there would be a certain amount of it outside in the channel.

Mr. TAWNEY. I do not know whether you can answer this question or not, but I will ask it. Has the Dominion Government or the provincial government, either of them or both of them, authority to authorize the construction of a boom on the Canadian side at Fort Frances without the consent of Fort Frances?

Mr. STEWART. I could not answer that question.

Mr. TAWNEY. I assume, from the fact that the authority for the boom which has already been given by the public works department up to a certain point of Fort Frances has been approved only in part, that the final authority as to whether or not the obstruction in the river could be placed there, whether it can be placed there or not depended upon or rested with Fort Frances?

Mr. STEWART. I really could not tell you. It is a complicated question.

Mr. MIGNAULT. There is a rather important point I would like to have cleared up for my information. If the navigation in the river opposite the boom of the International Lumber Co. were conducted entirely on the Canadian side of the river, would that have any prejudicial effect on the banks of the river on the Canadian side?

Mr. STEWART. I think it would. You mean with the river in its present condition?

Mr. MIGNAULT. Mr. Chapleau took that position. He may have misunderstood. I put the question to him, and I understand he said it would not.

Mr. STEWART. I understood Mr. Chapleau that way, but there has been a great deal of erosion going on on that bank. The stronger

current, on account of the blocking by that boom, would have a certain effect, and the wash of those fast launches.

Mr. MAGRATH. I do not think there is any question about that.

Mr. ANDERSON. That is all the evidence we have to offer. In connection with the photographs which we have put in during Mr. Corriveau's evidence, I suggest that those photographs remain with the commission, and we have duplicates and will have them enlarged and identified and filed with the commission.

Mr. MURRAY. There was a map put in, Exhibit A. I would like to substitute blue prints for that.

Mr. GARDNER. Is there anyone present who desires to ask Mr. Stewart any questions?

Mr. MIGNAULT. I suppose you will make an argument or statement?

Mr. ANDERSON. I did not intend to.

Mr. GARDNER. You are through with your testimony, Mr. George?

Mr. GEORGE. Yes. There is one point in Mr. Chapleau's evidence I would like to clear up, and I will have to recall Mr. Backus. It is in regard to the difficulty of securing the shore rights on the American side to extend the boom.

Mr. MIGNAULT. I was not impressed with that phase of it. It would not be an argument with me, that he could store the logs farther up the stream.

Mr. GEORGE. It is impossible to get a location farther up the stream. I will recall Mr. Backus to clear up that matter.

Mr. POWELL. Have you any further witnesses, Mr. Stewart?

Mr. STEWART. It is closed as far as the evidence is concerned.

#### AFTER RECESS.

The commission reconvened at the expiration of the recess.

Mr. GARDNER. Mr. George, are you ready to proceed?

Mr. GEORGE. I am just waiting, Mr. Chairman, for Mr. Backus.

Mr. TAWNEY. While you are waiting for Mr. Backus to arrive, Mr. George, I want to call Mr. Shepard.

#### STATEMENT OF MR. G. M. SHEPARD, OF MINNEAPOLIS, MINN., ASSISTANT TO ONE OF THE CONSULTING ENGINEERS OF THE COMMISSION.

Mr. G. M. SHEPARD, after being first duly sworn, testified as follows:

Mr. TAWNEY. Mr. Shepard, you were present, I understand, this morning and heard the testimony of Mr. Chapleau and Mr. Stewart with respect to the effect on the level of Rainy Lake of the obstructions or the filling of the boom solid in the upper end of the International Lumber Co.'s boom?

Mr. SHEPARD. I was.

Mr. TAWNEY. You are employed as an assistant to Mr. Meyer, one of the consulting engineers of the International Joint Commission, are you not?

Mr. SHEPARD. Yes, sir; I have had charge of certain investigations in his office and certain field surveys.

Mr. TAWNEY. You are a hydraulic engineer?

Mr. SHEPARD. Yes, sir.



Mr. TAWNEY. You are a graduate of what school?

Mr. SHEPARD. I am a graduate of the University of Minnesota.

Mr. TAWNEY. You have been studying this whole problem, have you not, in connection with the work of Mr. Meyer as consulting engineer of the commission?

Mr. SHEPARD. Yes; I have been studying it more or less for the last three years in connection with this work.

Mr. TAWNEY. Will you state, Mr. Shepard, what information you have concerning the effect on the lake levels caused by the filling of this boom solid as it has been said to be filled down here in the past?

Mr. SHEPARD. I would like to explain first that the Fort Frances and International Falls grinder room and power plants take up from 9,000 to 10,000 cubic feet of water, and that for the greater part of the time this makes up the entire flow of the stream. I would like also to state that they require that water. Whether the logs are merely on the surface or packed to the bottom, they require the same amount of water at the plants. With this same continued draft from the lake the lake will be drawn down a constant amount regardless of the construction of the boom. Consequently, any obstruction in the boom will draw down the head at the plant rather than increase the level of the lake.

I have made computations which show that this head will be drawn down under ordinary conditions of 10,000 cubic feet per second of discharge by one-half inch when the boom is filled solid to the bottom for a distance of 500 feet from the American shore. That is under conditions obtaining the greater portion of the time, ordinary conditions of discharge of 9,000 to 10,000 cubic feet per second.

Under extreme meteorological conditions, which may occur, say once in 25 years, when the sluice ways are entirely open to get rid of the excessive discharge, the obstruction will have the effect of raising the lake.

Mr. TAWNEY. That is due to the fact that the discharge cross-sectional area is not sufficiently large to take care of the excessive flood waters and that obstruction affects the level of the lake above?

Mr. SHEPARD. Yes, sir; that is true. The decreased area there requires an additional head which can not be obtained except by raising the lakes, since there are no more openings. If part of the dam were taken out that would not be necessary. But under existing conditions the lake would rise only in that extreme condition.

Mr. MAGRATH. You differ, then, from Mr. Stewart in his statement that with the discharge area reduced through the lumber piled within the American boom it will affect the level 3 inches on the lake?

Mr. SHEPARD. I differ in this way: That the additional head required is obtained by drawing the water down in the dam instead of increasing it in the lake except in extreme conditions when the sluices are all opened.

Mr. MAGRATH. So this additional increase of 3 inches in the level of the lake due to this congested condition we are speaking of in the boom is only likely to occur once in 25 years? Is that what you mean?

Mr. SHEPARD. That is my point; yes, sir. Under ordinary conditions the increased head is obtained by drawing the water down

here at the dam instead of raising it at the lake. The plants requiring 10,000 cubic feet per second continually use the same draft from the lake at all times, so that no increase in the lake could be obtained without cutting off the discharge for the plants.

Mr. MAGRATH. I think it is important that we should have that feature cleared up. If Mr. Stewart is in the room, we would like to ascertain whether or not he agrees with that.

Mr. TAWNEY. Before Mr. Stewart is called I would like to inquire whether Mr. Meyer has anything to offer on that point, and then Mr. Stewart can reply to both of them.

**STATEMENT OF MR. ADOLPH F. MEYER, OF MINNEAPOLIS, MINN.,  
CONSULTING ENGINEER OF THE INTERNATIONAL JOINT COM-  
MISSION.**

Mr. ADOLPH F. MEYER, after being first duly sworn, testified as follows:

Mr. TAWNEY. I will endeavor to state, Mr. Meyer, the question based upon the testimony of Mr. Stewart and Mr. Chapleau this forenoon to this effect: That the obstruction or the filling of the International Lumber Co.'s boom for a certain distance opposite the Shevlin-Clarke Co.'s boom with logs from the bottom to the top of the river would, as testified by Mr. Stewart, raise the level of the lake from 3 to 4 inches and, as testified by Mr. Chapleau, raise the level of the lake about 6 inches. Mr. Shepard called attention at noon to the fact that owing to the necessity for a continued discharge of so many second-feet at the dam that condition—namely, the raising of the level of the lake on account of the filling from the bottom to the top of the river of part of this boom—would raise the level of the lake, and Mr. Shepard said that it would not, except when the condition of flood waters was such that the full discharge capacity was not sufficient to take care of the flood waters, and in that case it would have a tendency to raise the level of the lake, which, he said, would occur about once in 25 years. The impression which I received from Mr. Stewart's testimony and from that of Mr. Chapleau was that that effect would be continuous regardless of any exceptional conditions. Mr. Shepard's position, as I understand it, is that owing to the necessity for a continual draft upon the lake that result would obtain only in exceptionally high-flood conditions, which occur approximately about once in 25 years.

Mr. MEYER. My position is that the effect would be a reduction in head at the plant under all conditions except when the discharge capacity of the dam is used to its fullest extent. That will occur only at times of extreme flood. The exact frequency of that it is impossible to determine, but it is not likely to occur more than once in 10, 15, or 20, and possibly 25 years.

Mr. MAGRATH. So, knowing the demands that will be made for water at these power plants, you believe that this congestion referred to will affect the level of the lake a few inches only on rare occasions?

Mr. MEYER. I do.

Mr. MURRAY. Would not the current be very much increased at the throat or that narrow part opposite the congested portion of the river?



Mr. TAWNEY. Mr. Shepard does not contend that the velocity of the current will not be increased. He agrees with Mr. Chapleau and Mr. Stewart in that regard. I do not know what Mr. Meyer's position may be in the matter.

Mr. MEYER. The current will necessarily be increased, roughly, in proportion to the decrease in cross section.

Mr. MIGNAULT. Mr. Meyer, roughly speaking, what is the fall between the International Lumber Co.'s boom and the dam?

Mr. MEYER. There is a good deal of fall concentrated down here near the dam. It is concentrated up near the rapids and down close to the dam. That varies, of course, with the discharge, but, as I recall it, even at high stages it is only a few tenths of a foot.

Mr. MAGRATH. What you say is that there is very little fall throughout the length of the International Falls boom and the Shevlin-Clarke Co.'s boom?

Mr. MEYER. Yes. Most of the fall is above and below.

Mr. WYVELL. Mr. Meyer, about the 9th of November of this year you made a report in writing to the commission, did you not?

Mr. MEYER. I did.

Mr. WYVELL. And this is a copy of it, is it not? [Handing a paper to the witness.]

Mr. MEYER. It appears to be; yes, sir.

Mr. WYVELL. I just want to refer to a part of the third paragraph.

Mr. ANDERSON. Are you filing that, Mr. Wyvell?

Mr. WYVELL. Yes; I will offer this in evidence.

Mr. TAWNEY. I will say for the information of Mr. Anderson and others that this report was made by Mr. Meyer on the possible effect of the construction or maintenance of this boom on the regulation and flow of these waters through the dam in connection with the Lake of the Woods investigation, in which he reports that the effect will be to raise the level and also increase the flow. I suppose Mr. Wyvell is offering it for the purpose of establishing the jurisdictional fact in connection with the application.

Mr. WYVELL. I would like to read the report in evidence. It is as follows:

UNIVERSITY OF MINNESOTA,  
Minneapolis, Minn., November 9, 1916.

INTERNATIONAL JOINT COMMISSION.

Washington, D. C., and Ottawa, Ontario.

GENTLEMEN: In accordance with your instructions, I have considered the possible effect of the proposed boom of the International Lumber Co. in the Rainy River at International Falls, Minn., on the regulation of the levels and outflow from Rainy Lake.

On my recent visit to International Falls, in connection with the Canadian Northern situation, I inquired of representatives of the company relative to the extent to which the proposed boom will alter existing conditions. It appears from information furnished—and this is confirmed by my own limited observations—that no radical change in conditions as to extent of log storage in the river is contemplated.

During the spring flood of 1910 the lower boom, consisting of piles driven close and used for the storage of pulp wood, was filled solid. The upper boom, used for storage of logs, was filled solid for a considerable distance out from shore, about as far as, according to the statements of the company's representatives, it is now contemplated to fill same. The company holds that it is impracticable to fill the boom solid to the ground for any great distance out on account of the space required for sorting the logs.

As the discharge, under future regulation, must be about as great as it was this spring, and as the lake level this spring was above elevation 500, the current in the river is certain to be greater in the future than it was last spring. If the 497 level is maintained, there would be a very substantial increase in the swiftness of the current. I believe, however, that it is entirely practicable to construct booms and to anchor them in a manner which will prevent the escape of logs under such conditions.

I believe the construction and also the action of the boom during high-water stages should be subject to inspection. While it might be feasible to require that only a portion, say, one-quarter, of the boomed area should ever be filled solid to the ground, nevertheless it seems to me that better results could be secured and all interests better safeguarded if the approval of construction were made subject to continual supervision of maintenance by the international board of control contemplated. In this way the extent to which the boom is filled solid might be varied with the meteorological conditions indicative of spring run-off. The permissible extent of such filling would also depend upon whether the stage was limited to 497 or 500 in the lake.

The additional fall resulting from a constricted channel would result in a loss of power to the company; hence its own interests would in a measure be opposed to excessive log storage.

I am informed by the St. Paul United States engineer office that the location of the boom, in so far as the rights of navigation are concerned, is satisfactory to the War Department so long as no similar structures are placed on the Canadian side. In this event the company should be required to move the boom back from the boundary to provide a navigation channel.

Respectfully submitted.

ADOLPH F. MEYER, *Consulting Engineer.*

Mr. MEYER. I want to remark that my understanding was that the commission asked us to look into the matter and state our views to them. I did not know that it was to be a public document, and I have not even looked at it from the time it was written until now.

Mr. WYVELL. Mr. Meyer, with reference to this report of November 9, 1916, I notice that you state that during the spring flood of 1916 "the upper boom used for the storage of logs was filled solid for a considerable distance out from shore, about as far as, according to the statements of the company's representatives, it is now contemplated to fill same." Under the conditions which you found, and upon which this letter was based, the flow on the Canadian side would necessarily be increased, would it not? The water would flow faster on the Canadian side of the boundary?

Mr. MEYER. Under those conditions that prevailed at that time. It would not if there had been no logs there.

Mr. WYVELL. Under most any conditions the flow would be somewhat faster, would it not, on the Canadian side with the condition of the logs as you describe them in this letter?

Mr. MEYER. Yes; the flow would be increased on the Canadian side even with only a surface covering of logs.

Mr. WYVELL. Of course, that would be quite imperceptible, would it not?

Mr. MEYER. Nevertheless appreciable.

Mr. ANDERSON. The information that you had, Mr. Meyer, as to the condition of the jam was from officials of the International Lumber Co.?

Mr. MEYER. That and my own observation that out beyond the logs were piled several feet above the water level, which necessitated their being under the water for a considerable distance.

Mr. ANDERSON. You did have personal observation?

Mr. MEYER. I saw it about the 31st of May of last year, at the time of our visit there.



Mr. ANDERSON. To what extent were the logs piled then?

Mr. MEYER. My recollection is that they were piled up 5, 6, or 8 feet, varying in some places to possibly 10 or 12 feet, and sloping off toward the water. That is just as it appeared from the opposite side of the river. I did not make any measurement as to the height to which the logs actually were piled, but there was a considerable storage piled there, and it was quite evident from observing it from the opposite side.

Mr. GARDNER. You mean that they were piled 12 feet above the water level?

Mr. MEYER. Yes; I should judge so, roughly speaking.

Mr. ANDERSON. About what time does the navigation open there, Mr. Meyer?

Mr. MEYER. Varying with the seasons. Do you mean on the river or in the lake?

Mr. ANDERSON. I mean on the river.

Mr. MEYER. I really do not feel qualified to say as an average what would be the time of the opening of navigation on the river.

Mr. ANDERSON. I mean just from your observation.

Mr. MEYER. It is open so much of the time in portions of the river on account of the warm water in the lake that I should judge it would be open relatively early in the spring.

Mr. ANDERSON. What time have you seen it open in the spring?

Mr. MEYER. I do not believe that I have ever been there near the time of the break-up in the spring; that is, I do not recall at this present moment.

#### FURTHER STATEMENT OF MR. W. J. STEWART, CHIEF HYDROGRAPHER OF THE DOMINION OF CANADA.

Mr. STEWART. When I made my statement this morning about the rise in Rainy Lake by reason of the jam in the lakes here, the figures I used were for a flow such as occurred last spring, in 1916, the heavy flow of 37,000 feet. My point was that it was raising the level of the lake at a time when it would be dangerous. In ordinary times during the summer, when the level is nearly normal, a rise of a foot or two in Rainy Lake is not material. It improves navigation, if anything, but does not cause an injury. But in the flood condition such as they had in 1916, 2 or 3 inches is an important factor there, as everyone knows, in connection with the flooding of the Canadian Northern Railway, for instance, and the flooding of the land on Pithers Point and around there.

Mr. TAWNEY. So that there is no radical difference between your conclusion from an engineering standpoint and the conclusion of Mr. Shepard and Mr. Meyer?

Mr. STEWART. There is no radical difference that I can see between the two statements, if you put the two together.

Mr. TAWNEY. Your testimony has reference to exceptional flood conditions?

Mr. STEWART. My testimony had reference to them.

Mr. TAWNEY. I think the inference was left, however—I know it was with me—that your conclusion applied generally to conditions

without regard to the draft down at the outlet from the lake in ordinary conditions.

Mr. STEWART. No; I was using a very heavy discharge.

Mr. MIGNAULT. The point of your evidence is that at critical times it would make the situation worse?

Mr. STEWART. That is my opinion.

Mr. GEORGE. Mr. Stewart, in time of flood, such as the spring of 1916, is it not a fact that the outlet at Pithers Point measures the amount of water that would pass down Rainy River and not any obstruction below there? In other words, was not there space enough there in the river? With the logs jammed as they were was there not more water than could get through to Pithers Point?

Mr. STEWART. I could not say that definitely without looking into the cross section. The cross section is terribly contracted there where the boom is.

Mr. BACKUS. Is it as contracted as it is at Pithers Point?

Mr. STEWART. That remains fixed.

Mr. BACKUS. I realize that; but you measure the cross section at the bridge, at the outlet at Pithers Point, and then measure the cross section at the point where the logs are, and I think you will find that the cross section where the logs are is greater than that at Pithers Point.

Mr. STEWART. That may be, but by piling in the logs the cross section opposite to that is contracted, and that certainly affects the flow.

Mr. BACKUS. Well, would it affect the flow if the water could not get through Pithers Point fast enough to be absorbed down below? In other words, if the cross section at Pithers Point is less than where the logs are, would the logs have any effect on the amount of water that would get through?

Mr. STEWART. Yes.

Mr. BACKUS. Well, I would like to have you explain how?

Mr. STEWART. If you contract any section, you affect the flow. But with that pile of logs in there the section is more than cut in half, as shown by the measurements given in my evidence this morning.

Mr. BACKUS. Very true; but even then is it not larger than the cross section at Pithers Point?

Mr. STEWART. But the cross section at Pithers Point is the same no matter whether the channel below is contracted or not. You might just as well say that you would affect the channel away up at Kettle Falls.

Mr. MAGRATH. The point that Mr. Backus wishes to get at is this, in extreme high floods in the cross section at Pithers Point the governing cross section, or is it the cross section down here where his logs are?

Mr. STEWART. Well, I can not say for certain whether that is so or not, but the section down here having been contracted by those logs—the flow is impeded at that point.

Mr. GARDNER. Would it affect the flow at Pithers Point?

Mr. STEWART. My opinion is that it would.

Mr. MURRAY. There is a vast difference in the velocity?

Mr. STEWART. Yes; the water would get through much faster.



## ADDITIONAL STATEMENT OF MR. EDWARD W. BACKUS.

Mr. GEORGE. Mr. Backus, it was stated by Mr. Anderson, counsel for the Dominion Government, yesterday afternoon, by way of suggestion, that the proper way of getting rid of any objection to this application would be to lengthen out the boom and lessen the width so as to reduce the width so that it would not come to the international boundary line within 100 feet on the American side. Will you tell the commissioners what the situation is that prevents the lengthening of the boom upstream?

Mr. BACKUS. I will. The property on the Minnesota shore, opposite the easterly end of the International Lumber Co.'s boom, as shown on Exhibit D, is private property, and, notwithstanding all kinds of overtures made by the lumber company to the owners of that property, they never have been able to secure any frontage in the river abutting that property. If it could have been done, it would have been done, and, even with the boom as it is now, there would not have been room enough then. In other words, that boomage can not be secured, even if it could be secured, it would not be feasible to narrow the boom and say that you had room enough to handle the forest products, because we fill the boom to its maximum capacity, and then we have to go to the expense of piling elsewhere. It is only a question of how much extra expense that amounts to.

Mr. MIGNAULT. I suppose the inference is that if you could extend the boom upstream, you would do so?

Mr. BACKUS. We certainly would.

Mr. MIGNAULT. Because you need the space?

Mr. BACKUS. We need the space; yes, sir.

Mr. POWELL. You have had that in contemplation, and it is your intention to work it out?

Mr. BACKUS. Yes, sir; we do not pray that anybody will die, but death may bring about a condition like that some day.

Mr. GEORGE. Is it not a fact, Mr. Backus, that that condition which you spoke of is increased by the fact that the land above the boom is subdivided and sold to numerous owners?

Mr. BACKUS. Yes, sir. Now, I would like to make a voluntary statement here in answer to Mr. Stewart and the others who have testified on the effects of the jam in this boom in times of flood. If I had known that question would arise here, I would have had our engineers down here to sound the river from the outlet at Pithers Point under the bridge during flood time and since and at different places along the river, including the discharge at the dam. We have figures to show that the outlet at Pithers Point is the controlling factor and not the amount of discharge at the dam or in the river between Pithers Point and the dam. I have not those figures here, and I just want to make that statement for what it is worth.

Mr. GEORGE. Mr. Backus, evidence was given by Mr. Langlois here this morning to the effect that in the month of May, 1914, he took certain soundings, upon which Exhibit D, which is before you, was made, and that he found that, starting from the outer edge of the boom and going up to the shore, the pulp wood existed from the top of the water down to the bottom of the river. Is that condition a permanent one at that particular point in the boom?

Mr. BACKUS. No; it is not. That is, you mean does it exist throughout the year?

Mr. GEORGE. Yes.

Mr. BACKUS. No. Take it right now, for instance, there is not a stick of material of any kind there, nor has there been very much since, we will say, early in September.

Mr. GLENN. How much of the year is it full from top to bottom?

Mr. BACKUS. In the summer time, do you mean?

Mr. GLENN. The whole year round.

Mr. BACKUS. Perhaps once in a year on an average.

Mr. GEORGE. Are those months in the period of navigation, Mr. Backus?

Mr. BACKUS. Well, they would include early in the season of navigation.

Mr. POWELL. They were in 1916?

Mr. BACKUS. In 1916 we did not dare move anything, because the minute you start a jam in high water you do not know where it is going to stop. We just kept the men away from there entirely.

Mr. MAGRATH. Do you put logs within that boom in the winter?

Mr. BACKUS. Yes, sir; from the cars.

Mr. GEORGE. I was just going to ask Mr. Backus to explain to the commission the methods by which the pulp wood and logs get into the boom.

Mr. BACKUS. The logs and pulp wood that we get there in the wintertime are entirely by railroad transportation, the aim being to remove that material that comes in the winter—at least enough of it—so that when navigation opens and the ice is out of the lake we can bring the logs and pulp wood in from up the lake and let that material go inside that boom.

Mr. GEORGE. So that the plan of operation is to——

Mr. BACKUS. Keep it moving.

Mr. GEORGE. The plan of operation is to have any congestion that is there at any time of the year removed as soon after the period of navigation as possible?

Mr. BACKUS. Yes, sir; in the ordinary course of business. Of course, last year was an extraordinary year.

Mr. GEORGE. Several of the witnesses have been asked to-day by one or the other of the commissioners as to the time when navigation opens on Rainy River. Can you give the commission any information on that point?

Mr. BACKUS. The river is open usually late in the month of April. The lake above is open to the navigation which carries the boats up into the lakes between the 1st and the 15th of May, as soon as the ice goes out.

Mr. GEORGE. The question as to whether or not the river is frozen over does not determine the period when navigation opens, then?

Mr. BACKUS. No; it does not, because they can navigate when the river opens from International Falls and Fort Frances to Ranier; but, so far as the lake navigation is concerned, it determines that part of it.

Mr. GEORGE. But so long as the lake is frozen up——

Mr. BACKUS. There is not much navigation; nothing but the ferry-boat.



Mr. GEORGE. A question has been asked by one of the commissioners. Mr. Backus, as to the extent that the boom for which you are applying for approval is used for the Fort Frances Pulp & Paper Co.'s products. You gave evidence on Monday to the effect that approximately 25 per cent of the capacity of the boom was used for that purpose. Could you be more specific?

Mr. MAGRATH. I did not understand Mr. Backus to say that. I understood him to say 25 per cent of a certain portion of the boom. Which is correct?

Mr. BACKUS. The Fort Frances product is piled from a point just on the opposite side of the river, just a little west of the Shevlin-Clarke Co.'s mill, easterly in one separate place. That occupies about a quarter of the space of the whole. But that quarter would not provide for more than a quarter of the wood consumed at the Fort Frances mill, even at that.

Mr. MAGRATH. Mr. Backus, how far are those clusters of piles apart? We could have it scaled, but perhaps you can give us the information roughly. The information I want to obtain from you is this: I want to get some idea as to the cost per mile of this boom of yours. Then I want to get from you a statement as to what you regard as the life of a boom of that character.

Mr. BACKUS. Well, in answering your question as to the proximity of the piling, that differs, as you will notice by the plan. Wherever the current appears to set out so that the logs will go under, the clusters are driven more closely together.

Mr. MAGRATH. Are they about 60 feet apart?

Mr. BACKUS. No; I do not think they will average over 30 feet. Of course, the cost of works of that kind runs into money pretty rapidly, and the life of a boom is the life of an ordinary sawmill operation, as a rule. The only decay is above the water line, and, of course, that means that we put men on every year, who come along and maybe drive piling to reinforce the rest of it, and keep doing it.

Mr. MAGRATH. So that repairs are going on continuously from time to time?

Mr. BACKUS. Yes, sir.

Mr. MIGNAULT. Ice conditions have no effect, I suppose?

Mr. BACKUS. Not in a place like that, except that if there is a big enough jam to destroy the clusters you have to replace them.

Mr. POWELL. There is not enough length of stream to give you sufficient ice to hurt?

Mr. BACKUS. No, sir.

Mr. MAGRATH. What is in my mind is this: Request has been made to have you place that boom about 100 feet away from the boundary. I want to get some idea of what that means in money.

Mr. BACKUS. Well, in that case I should say it would mean—I do not like to make a guess—but I should say between \$35,000 and \$50,000.

Mr. POWELL. They are long piles?

Mr. BACKUS. Yes; some of them are from 60 to 70 feet long.

Mr. TAWNEY. Mr. Backus, I was called out of the room for a moment, and you may have answered this question. A question arose here this morning while one of the Canadian engineers was testifying as to how these logs were sorted last spring during high water,

whether it was you or whether it was the Shevlin-Clarke Co. that did the sorting. What are the facts in that connection?

Mr. BACKUS. There was no sorting done.

Mr. TAWNEY. Well, with reference to these loose logs that were running down the river and going down into your lower boom; there was some sorting done there while Mr. Magrath and I were there last spring.

Mr. BACKUS. Well, Mr. Tawney, the method pursued last summer was to take them all and put them into bag booms and tow them back up, which we did; and they were taken into the Shevlin-Clarke boom, and after the high water was all over they were sorted. Our pulp wood was turned loose, and that came down the river again.

Mr. GARDNER. Who did that work of bagging?

Mr. BACKUS. We both had men there.

Mr. GARDNER. It was done jointly?

Mr. BACKUS. Yes, sir.

Mr. ANDERSON. Mr. Backus, in answer to Commissioner Magrath's question you gave an estimate of cost that would be required to remove your boom back 100 feet on your side of the international boundary as between \$35,000 and \$50,000, roughly. Just what did you have in your mind as to the work when you were answering that question?

Mr. BACKUS. That would be the cost of the piling and the driving of the piling.

Mr. ANDERSON. To what extent did you consider that you would have to do that, from end to end, when you were making that estimate?

Mr. BACKUS. Yes; practically.

Mr. ANDERSON. That would be, in effect, building a new boom there?

Mr. BACKUS. Yes, sir.

Mr. ANDERSON. As a matter of fact, even if 100 feet is to be maintained, there is a part of them that you would not have to remove at all? There is a part of your boom that is at least 100 feet, and probably more, inside the international boundary? You would have to eliminate that from the cost?

Mr. BACKUS. Yes, sir.

Mr. ANDERSON. Then, on the other hand, the portion west of that you would have to remove anyway because, with respect to a considerable part of it, you are now inside the international boundary, and, according to your proposed plans you are going to move up to within 10 feet of the international boundary. I am simply pointing out to you that under your proposed new plan you would have to reconstruct a part of this boom anyway.

Mr. BACKUS. I want to say here that if this commission says that it does not see any particular reason for changing this boom the chances are we would not change it at all. Suppose they say remove the outside piling, where it goes across the boundary line? That would be done. But simply because this is approved and we have a right to go out to a certain point does not mean that we would be requested or forced to do so; we could stay as far in as we chose. Do you not so understand it?

Mr. ANDERSON. That may be true, but you have asked for the approval of certain plans and the commission, I take it, will either



approve or disapprove of those plans. Your plan down here at the western end involves moving your pilings a considerable distance.

Mr. BACKUS. Out into the stream?

Mr. ANDERSON. Yes.

Mr. BACKUS. We would not be required by the order to move them out into the stream, but we would have a right to do it.

Suppose, then, that the time should come when that portion of the boom would have to be rebuilt. Then we would have a right to build it out there.

Mr. ANDERSON. Well, do you not contemplate doing that?

Mr. BACKUS. Not immediately.

Mr. ANDERSON. I see; it is simply to get approval of plans to do that.

Mr. BACKUS. When it was found that the boom now existing did not conform entirely to the plan approved years ago, Maj. Peeks suggested that the boom ought to be constructed as a uniform boom. His suggestion was that in time we remove the obstructions on the outside now and then as we got to it to change the other.

Mr. ANDERSON. Those points would have to be taken into consideration in connection with your estimate of \$35,000 to \$50,000?

Mr. BACKUS. Certainly.

Mr. ANDERSON. You have said that the blockade—if we may so express it—in your boom opposite the Shevlin-Clarke Co.'s boom extends perhaps for two months out of the year.

Mr. BACKUS. Do you mean piled to the bottom?

Mr. ANDERSON. Yes.

Mr. BACKUS. I would not say that. I would say during the season of navigation.

Mr. ANDERSON. You pointed out that at the present time there is not any piling there to speak of.

Mr. BACKUS. There is no forest products.

Mr. ANDERSON. You do not commence doing that until a little later on in the season?

Mr. BACKUS. Probably we are just about piling some there now.

Mr. ANDERSON. And that will continue until you get a lot of stuff there?

Mr. BACKUS. Yes, sir.

Mr. ANDERSON. Now, with reference to your efforts to secure frontage up here for an enlargement of your boom you say that, notwithstanding overtures upon your part, you have not been able to succeed?

Mr. BACKUS. Yes, sir.

Mr. ANDERSON. Perhaps the overtures were not sufficiently attractive or sufficiently conducive.

Mr. BACKUS. The parties said they would not consider it at all.

Mr. ANDERSON. What is the shore there occupied by?

Mr. BACKUS. Cottages.

Mr. ANDERSON. What sort of cottages—people living there all the year round?

Mr. BACKUS. Yes, sir.

Mr. ANDERSON. And you say you have not been able to get the parties there to put any prices at all upon their land?

Mr. BACKUS. No, sir.

Mr. ANDERSON. Did you ever make them an offer?

Mr. BACKUS. There is one party there that is impossible enough to say that he did not care if we would give him a million dollars a year, he would not consider it. He would not talk about it.

Mr. ANDERSON. Well, they are not all as unreasonable as that.

Mr. BACKUS. Well, if you could not get them all it would not do you any good.

Mr. ANDERSON. I always take it that if you made the overtures sufficiently attractive you would get what you want.

Mr. BACKUS. I do not believe you have ever heard of my making any unbusinesslike offers.

Mr. ANDERSON. No; I have not, Mr. Backus.

Mr. BACKUS. Or efforts that would reflect on a business man's integrity or his methods of doing business.

Mr. ANDERSON. Not at all. Now, coming to another point that I hesitate a little bit about entering into any discussion of—

Mr. MAGRATH. Before you go on I would like to ask Mr. Backus another question. What right has anyone on the adjoining lands to interfere with your doing what has been done on the Canadian side; that is, leaving a lane along the shore?

Mr. BACKUS. The law on this side, as given to me, is that unless you get the consent of the abutting property owners they have access to the middle of the stream.

Mr. MAGRATH. Did they get their titles from your township company?

Mr. BACKUS. No, sir; International Falls only goes as far east as the International sawmill.

Mr. ANDERSON. If that property is subdivided, probably in the subdivision a man would just get a lot and the title might not be granted to the bed of the stream. But, anyway, that is a question of law. Ordinarily, while they would have title, possibly, to the bed of the stream, that would not give them any right to the water at all.

Mr. TAWNEY. A riparian owner has title to the bed of the stream and to the center of the stream in the soil, subject to the property right of use for navigation purposes.

Mr. MIGNAULT. But if you cut off his access to the stream he can complain?

Mr. TAWNEY. Yes; he has the right of ingress and egress to and from the stream all the time.

Mr. ANDERSON. Yes; if a lane were provided there I suppose he would have access.

Mr. TAWNEY. He would have access to the lane.

Mr. ANDERSON. Now, with reference to the discharge at Pithers Point, do you suggest, Mr. Backus, that no obstruction that can be placed in the stream below would affect the level of the lake?

Mr. BACKUS. So long as as much water can get by down there as can get through Pithers Point, no. Certainly, if the stream west of Pithers Point can take care of more water than can get through Pithers Point, then the obstruction at that point in the stream could not raise the level of the lake.

Mr. ANDERSON. There is no doubt that such an obstruction could be placed in the river as would affect it?

Mr. BACKUS. There is no doubt about it.



Mr. ANDERSON. It is only a question of whether that contention of yours is right as to the discharge capacity at Pithers Point as compared with the capacity of the stream at the point in question.

Mr. BACKUS. That is true. But I can bring witnesses to show you that years before the dam was built boats that would navigate Rainy Lake have gone in and down Rainy River from away behind the Indians' residence over the railroad tracks, where the commissioners and myself were inspecting it last spring. A boat went right down Rainy River right out of Rainy Lake before there was any obstruction in Rainy River at all. That simply means that Pithers Point then, as now, is the governing factor.

Mr. ANDERSON. It simply means that Pithers Point does not discharge water fast enough at certain times of the year on account of the quantity of water.

Mr. BACKUS. Yes, sir.

Mr. MIGNAULT. Does your company own the land on the Minnesota side opposite your boom?

Mr. BACKUS. It does; yes, sir.

Mr. TAWNEY. Mr. Backus, there was one question in respect to the raising of the level of the water in Rainy Lake, which you say would not arise on account of obstructions in the boom, that I want to ask you whether you have considered. Is it not a fact that if you increase the draft of water, the water will come through; but if there is an obstruction there in your boom it will not come out of the lake as fast as it otherwise would with an increased head down here? We will say that you are utilizing the entire cross-sectional area here for discharge purposes, and all the water is going out of that dam that you can get out of it. The obstruction, then, as I understand you, would not tend to raise the waters in the lake at all, because the outlet at Pithers Point controls the level of the lake. But is it not a fact that by using the entire cross-sectional area discharge in high-flood time the obstruction would prevent the water from coming down as fast as it otherwise would if there were no obstruction there?

Mr. BACKUS. I suppose it would a little. Theoretically, I do not think it would. But, I guess, practically it would slightly.

Mr. MIGNAULT. Well, it is an engineering question, and we have heard the experts. I presume you do not claim to be an expert, Mr. Backus?

Mr. BACKUS. No; I am only giving you the figures compiled by our engineering department on this same question, which involved the question of whether our dam or Pithers Point was the cause of the raising of Rainy Lake last year. I am giving you the opinion of our engineering department on that.

Mr. MIGNAULT. It comes to you second hand?

Mr. BACKUS. It comes to me second hand, as I stated to you in the first place.

Mr. MURRAY. I did not quite get your answer to Mr. Magrath in reference to the amount of that boom storage that you use for the Canadian pulp wood, whether it was one-quarter of the area of the whole, or one-quarter of a certain portion.

Mr. BACKUS. It is from a point just about opposite Shevlin's mills easterly.

Mr. MURRAY. Then you use about one-quarter of this area.

Mr. BACKUS. That amounts to about one-quarter of the whole.

Mr. MAGRATH. He uses all that area, which amounts to about one-quarter of the whole.

Mr. MURRAY. Yes. I was under the impression that this storage down here was filled with saw logs to the bottom. That is pulp wood?

Mr. BACKUS. Yes.

Mr. MURRAY. You use more storage in the river for Canadian pulp wood in proportion to the consumption than you do for your own?

Mr. BACKUS. Yes; because on the Minnesota side we have two or three storage places where we pile for the Minnesota mill, and we have none on the Canadian side.

Mr. MURRAY. As a matter of fact you had an enormous pile down near your mill and down in the inclosed place near the mill?

Mr. BACKUS. Yes.

Mr. MURRAY. A good many thousand cords piled there for several years?

Mr. BACKUS. Yes.

Mr. MURRAY. Is there any reason why you should not, if you acquired the land, have a similar pile on the Canadian side? It is simply a case of acquiring the land, is it not?

Mr. BACKUS. Of course, money will do anything.

Mr. MURRAY. I have computed, and as a matter of fact the portion is thirteen seventy-fourths, if you were storing the same proportion on the American side of your boom, that you would store for your American mill thirteen seventy-fourths of the whole booming space, which would cover 304 superficial yards of the boom. Do you know how much this area of the proposed boom would be up to the ferry dock?

Mr. BACKUS. We estimate about a day's run.

Mr. MURRAY. You do not know the area?

Mr. BACKUS. No.

Mr. MURRAY. I have computed it at 330 lineal yards; it is the same depth of river, and I am assuming the superficial space is the same.

Mr. MAGRATH. You say it is 330 yards long?

Mr. MURRAY. Yes.

Mr. MAGRATH. What width?

Mr. MURRAY. To the center of the stream 66 yards, and I am assuming the other is the same, if not wider. It is not wider at any rate. If he would go beyond the center of the river he would have a considerably larger area.

Mr. MAGRATH. He is getting very close to that dam.

Mr. MURRAY. This is all considerably above the bridge. I made the calculation up to the head of the canal which is above the bridge.

Mr. MAGRATH. During last spring, during high-water period, lumber held immediately above the bridge was quite dangerous.

Mr. MURRAY. During that torrent last spring during high-water period, lumber held immediately above the bridge was in a dangerous position. During that torrent last spring there was not much floating timber in the river that was safe at all. It would need a stronger and better protection. However, let us hope with the warning the



power interests got last spring that no such conditions will ever arise again.

Mr. TAWNEY. From the Shevlin-Clarke boom down to the lower end of the International Lumber Co. boom as it now exists, what is its relation to the boundary line, or in what respect does the existing boom, from the Shevlin-Clarke boom down, differ from the plan which has been approved by the Secretary of War?

Mr. BACKUS. I do not believe I just understand your question. You are referring entirely to the Shevlin-Clarke boom?

Mr. TAWNEY. No; from the Shevlin-Clarke boom down to the end of the International Lumber Co. boom, how does the present structure differ from the one planned and approved by the Secretary of War?

Mr. BACKUS. In two places, or in three places, there are piers slightly infringing upon the waters outside.

Mr. TAWNEY. That is the waters across the boundary?

Mr. BACKUS. Yes.

Mr. TAWNEY. But aside from that——

Mr. BACKUS. They are within it.

Mr. TAWNEY. Aside from that is the character of the structure as planned and approved by the Secretary of War the same?

Mr. BACKUS. Practically, aside from these three places.

Mr. TAWNEY. Then the present structure is within 10 feet of the international boundary except at the places which you have mentioned?

Mr. BACKUS. Well, a good part of it; yes.

Mr. TAWNEY. Is it not all planned, and are not the plans approved to 10 feet within the international boundary?

Mr. BACKUS. I do not understand your question.

Mr. GLENN. He gave us all of that on Monday.

Mr. TAWNEY. The present structure is not on the plan.

Mr. POWELL. Yes; it is on this plan.

Mr. BACKUS. You notice that the Shevlin-Clarke boom crosses the international boundary in at least one place. It seems to me that those booms are being operated about as well as they can be on both sides, with as little inconvenience to the public as anyone could expect.

Mr. EVANS. Mr. Backus has given us the benefit of his engineer's finding, which shows that Pithers Point, not his dam, is the controlling factor of the water level.

Mr. BACKUS. No; I said the contour of the country at the point where the bridge crosses.

Mr. EVANS. I wonder if the commission would be good enough to have their engineers report on that as well as Mr. Backus?

Mr. MIGNAULT. It does not impress me very much. Mr. Backus has given us the opinion of his engineers, and we have the testimony of several engineers to the contrary, so that as far as I am concerned I am not very much impressed.

Mr. TAWNEY. As I understand it, the engineers on both sides agree that it is only possible once in anywhere from 15 to 25 years that an obstruction such as heretofore existed in this boom would raise the level of the lake at all.

Mr. ANDERSON. Only whenever extreme flood conditions prevail, however frequent that might be.

Mr. MIGNAULT. The condition is worse on Rainy Lake?

Mr. ANDERSON. Yes.

Mr. GEORGE. That is all I have to offer.

Mr. ANDERSON. I have nothing further.

Mr. POWELL. Have you gentlemen anything to say to the commission?

Mr. GEORGE. As counsel for the Dominion Government intimated before the luncheon hour he did not propose to take up the time of the commission with an argument opposing the application, I do not propose to do anything in that line myself. I appear on the record for the Fort Frances Pulp & Paper Co. and the Ontario & Minnesota Power Co., and Mr. Rockwood asked me this morning over the telephone to appear on behalf of the applicant company as he was called to the Federal court on a case which has been engaging his attention for the last three weeks. I merely desire to say, therefore, that in view of Mr. Anderson's position the applicant company and the other two companies do not desire to submit an argument.

Mr. ANDERSON. I did not make that statement before lunch and I am not going to alter it. I am not proposing to argue it. I am going to make a suggestion to the commission, and if Mr. George or anyone else interested thinks it necessary to reply to me they may do so. I am not going to take up the time of the commission discussing the questions because they are not very difficult ones and the commission understands them thoroughly and nothing I would say would assist the commission at all. The facts are fully before you and are not difficult. All I have to say, representing the Canadian Government, is that in any approval you may give to the applicants I would suggest that that approval keep in mind first, the necessities of future navigation. Nothing should be done whereby navigation might in the future be impeded or obstructed, or seriously imperiled or interfered with, and in that connection I would suggest that you make such conditions as you see fit. For instance, one condition which has been suggested during the discussion and the giving of the evidence is that if you approve of the plans as laid before you, that that is not to be a permanent approval, but that if in the future at any time conditions arise in the opinion of the commission requiring a change, that it will be open to the commission to direct that change. In other words this might happen: If rights to construct a boom on the Canadian side were given, it might interfere with the situation very materially, and it must also be borne in mind that when once a thing is done it is difficult to undo it, and legitimate enterprise might be held up for a long time possibly. We do not want any possibility of injunction suits or litigation, or anything of that kind. I see in the report your own engineer has submitted to you a suggestion somewhat along the lines I am referring to, and no doubt, coming from your engineer, it will have considerable weight with you. I think you should retain control and supervision over any works that you may authorize.

Mr. GLENN. That is substantially the same as the submission by the Secretary of State to us. I think Mr. Wyvell wanted to be heard.

Mr. MURRAY. I am in this arrangement that the case should go before the commission without argument. I have nothing to add



to what Mr. Anderson has already said, or what has been set forth in our brief or statement which has been filed. I realize that the commission has been very patient and heard a great deal of evidence, and I think is seized of the facts of the case, so far as they affect the interests of the town of Fort Frances.

Mr. MIGNAULT. During this hearing it has been mentioned that an intimation had been given by the applicant or by the allied interests of the applicant that a dike would be constructed to protect the town of Fort Frances. If you have anything to say on that question in relation to the present application, it would be better you should say so.

Mr. MURRAY. As to the dike, the Ontario government has now, as I understand, in fact as I am told by your engineer, Mr. Rourk, the question of insisting on the construction of this dike under consideration. The engineer has gone so far as to say that the government is pressing the power company to construct that dike. We hope that the work will be undertaken. Mr. George assures me, on behalf of Mr. Backus, that the work will be undertaken. The construction of the dike, of course, would remove the objection in so far as the erosion of the bank is concerned. In fact the banks are in such a hopeless condition now between floods and the erosion caused by high water and by motor boats that it is only the building of a very satisfactory and permanent dike and the filling in that will remedy the present lamentable condition so far as the bank of the river is concerned. In relation to the dike, any trouble in relation to erosion will be cured by the construction of this dike. I do not know how far the commission can help us in that region, unless it is made a condition of the granting of the application that the dike should be constructed.

Mr. POWELL. We can make provision for that protection.

Mr. MURRAY. The construction of that dike is essential.

Mr. POWELL. Did the floods carry away much of that dike last spring?

Mr. MURRAY. Yes; a considerable portion. I think the engineers of the commission have a map of the survey showing the extent of the erosion, and if the contour lines on the map that is in are followed up it will be shown by the map that a very considerable portion of the front of the street is washed away. So that if the commission can help us in the matter of the construction of the dike I would like that they should do so.

Mr. GLENN. At the last meeting I attended of this commission the attorney for the lumber company, Mr. Clapp, not only made a considerable argument, but he filed a written brief in connection with the matter, stating that if this height were maintained, 497 or 500 or 502, it would wipe out his mills and the yards and all those things. I have not seen any evidence of that, but does this contemplate a dike that would protect the mill?

Mr. MURRAY. This is a different dike. This is to take care of different levels.

Mr. GLENN. Is there an understanding that if a different kind of abutment were put there surrounding the mill, it would do away with the necessity of maintaining that wall at 497?

Mr. MURRAY. There has been no agreement. The water has been maintained pretty close to 497. It was a term of the agreement

with the government that in relation to the 497 level a dike should be built, and that is the extent to which the government has been going in relation to the construction of the dike—that is, the provincial government. The dike is not in contemplation with any higher level and, as far as we know, would not protect against a higher level.

Mr. POWELL. Mr. Keefer, have you that agreement between the International Lumber Co. and the Ontario government?

Mr. KEEFER. I can get it, but I have not it here. There were two or three agreements. Do you mean the first one?

Mr. POWELL. The one that provides for the dike.

Mr. KEEFER. I will get it. I think it is among some of the records earlier in the procedure. I think it was filed at International Falls.

Mr. MURRAY. Page 51 of the proceedings. I think it is really an order in council. I think the plans filed in connection with that agreement also made some provision for a dike.

Mr. WYVELL. I have no evidence to offer the commission. I may say that the War Department has approved of these plans and we see no objection to them, with the proviso, as indicated this morning, that in case Canada wanted to use a portion of the water below the Shevlin-Clarke boom and toward the dam the order be framed in such a way that it could be modified so as to permit more space, in order that the boats could pass freely to and fro in the way of navigation. Otherwise we see no objection to approving the plans as approved by the War Department.

Mr. GARDNER. Then the hearing on this phase of the matter is closed.





# APPENDIX.

## EXHIBIT B.

### BY-LAW NO. 252.

A BY-LAW TO FIX THE ASSESSMENT OF THE ONTARIO & MINNESOTA POWER CO. (LTD.)

Whereas the Ontario & Minnesota Power Co. (Ltd.) has agreed to establish and operate within the town of Fort Frances a pulp and paper mill, upon and subject to the terms and conditions set forth and contained in Schedule A to this by-law; and

Whereas the municipal council of the town of Fort Frances has agreed to the terms and conditions of the said Schedule A; and

Whereas the said Ontario & Minnesota Power Co. (Ltd.) has made application pursuant to the said Schedule A to have its municipal assessment fixed as therein set forth; and

Whereas it is deemed expedient by the said town under and by virtue of its powers for granting aid by way of bonus for the promotion of manufactures within the limits of the said town, pursuant to Schedule A to this by-law, but subject to the provisions and limitations by statute so made and provided, to grant such application as is hereinafter set out: Now, therefore

The municipal council of the town of Fort Frances enacts and ordains as follows:

(1) The terms and conditions set forth in Schedule A hereto shall be and the same are hereby ratified and confirmed.

(2) For the purpose of fixing the assessments and rates (except for school and local improvement purposes) assessable by the town of Fort Frances, the property which the Ontario & Minnesota Power Co. (Ltd.) and its subsidiary companies now own or occupy, or which they may hereafter acquire or occupy (but for the purposes of the industries described in Schedule A hereto) shall be for the term of 10 years from the passing of this by-law assessed at the sum of \$25,000 annually, commencing with the assessment for the year 1912.

(3) Pursuant to the said Schedule A hereto, the council may, by way of bonus, remit and refund to the said Ontario & Minnesota Power Co. (Ltd.) its taxes (except taxes payable for school and local improvement purposes) for the year 1911 over and above the taxes payable for the said year upon an assessment of \$25,000.

(4) That on Monday the 29th day of April, 1912, the vote of the electors of the town of Fort Frances entitled to vote on this by-law shall be taken at the town hall in the town of Fort Frances, from the hour of 9 o'clock in the morning until the hour of 5 o'clock in the afternoon of the same day.

(5) That on Friday, the 26th day of April, 1912, at the hour of 12 o'clock noon, the mayor of Fort Frances shall attend at the said town hall and appoint persons to attend at the polls and at the final summing up of the votes by the clerk of the town, on behalf of the parties, respectively, interested in promoting or opposing the passing of this by-law.

(6) That the clerk of the town shall attend at the said town hall on Tuesday, the 30th day of April, 1912, at the hour of 12 o'clock noon, for the purpose of summing up the votes given for and against this by-law, and shall then and there sum up such votes and declare the result of the poll.

(7) That if this by-law is carried by the requisite number of votes of the electors entitled to vote thereon, the same shall be fully considered and finally passed by the council at a meeting to be held on Monday, the 6th day of May, 1912, and this by-law shall take effect from the passing thereof.

Read a first time in open council this 2d day of April, 1912.

Read a second time in open council this 2d day of April, 1912.

Read a third time and finally passed this 6th day of May, 1912.

[SEAL.]

(Signed) D. C. MCKENZIE, Mayor.  
(Signed) J. W. WALKER, Clerk.

I, John William Walker, clerk of the town of Fort Frances, do hereby certify that the foregoing is a true copy of by-law No. 252. respecting the assessment of the Ontario & Minnesota Power Co. (Ltd.), and that the attached agreement is a true copy of the said Schedule A thereto attached.

[SEAL.]

J. W. WALKER, Clerk.



## SCHEDULE A TO BY-LAW NO. 252.

MEMORANDUM OF AGREEMENT MADE THIS 15TH DAY OF MARCH, A. D. 1912, BETWEEN THE ONTARIO & MINNESOTA POWER CO. (LTD.), HEREINAFTER CALLED THE COMPANY, OF THE FIRST PART, AND THE MUNICIPAL CORPORATION OF THE TOWN OF FORT FRANCES, HEREINAFTER CALLED THE TOWN, OF THE SECOND PART.

Whereas certain differences have arisen between the Town and the Company in connection with the construction and operation of the Company's works at Fort Frances; and

Whereas with a view to completely settling the said differences the Company proposes, upon certain terms and conditions, to construct a pulp mill and a two-machine paper mill, having a capacity of 100 tons of news-print paper per day, and the Town has agreed to accept the same in satisfaction of its demands: Now therefore

In consideration of the mutual covenants and agreements herein contained the Company and the Town have mutually agreed, each with the other, as follows:

### I. THE COMPANY COVENANTS, PROMISES, AND AGREES.

(1) That it will forthwith, after the passing of the by-law hereinafter referred to and the acquisition of the site for the paper mill hereinafter referred to, proceed with the full and complete erection, construction, and equipment in the town of Fort Frances of a pulp mill and a paper mill having a capacity of 100 tons of news-print paper per day, and that the same be so constructed and maintained that it will provide continuous employment for at least 200 hands within the town of Fort Frances, subject to the provisions of Clause I (4) herein.

(2) That if the bill now pending before the Legislature of the Province of Ontario for the expropriation of a site for the Company's paper mill be passed in such form as to enable the Company to expropriate the following lands—that is to say, lots A, B, C, D, F, G, H, and X, and the south 34 feet 4 inches of lots I and J, as shown in the original plan of the town plot of Alberton in the town of Fort Frances, and the lands bounded on the north by Nelson Street between Mowat Street and Portage Avenue, and Sinclair Streets between Portage Avenue and Victoria Avenue, on the east by Portage Avenue between Nelson Street and Sinclair Street, and Victoria Avenue between the river and Sinclair Street, and on the south and west by the Rainy River and a part of Mowat Street—it will proceed to expropriate such lands as it may require for its paper-mill site and will serve notice of expropriation upon the persons interested therein within 30 days after the passing of said act and will forthwith proceed to acquire the said lands.

(3) That, subject to strikes, weather conditions, and causes beyond its control, the said pulp and paper mill shall be constructed and completed, fully and adequately equipped for operation, within 14 months from the enactment of the by-law hereinafter mentioned, or the time when the Company shall obtain possession of the site for the said paper mill, whichever shall be last.

(4) That it will, subject to destruction of or injury to the Company's works and plant by fire, lightning, tempest, or causes beyond its control during the period within which the said by-law hereinafter mentioned shall be operative, operate or cause to be operated the said pulp and paper mill continuously and to its full capacity as hereinbefore defined or, in case of shortage of water, to such an extent that not less than one-half the power developed from time to time from the whole of the stream shall be used on the Canadian side.

(5) That it will be responsible for and will indemnify and save harmless and protect the Town against and from all liability for damages, injury, loss and costs which may be incurred by the Town by reason of the performance by the Town of any agreement, covenant, act, matter or thing herein contained, provided that the conduct of any proceedings in connection therewith shall be under the control of the Company.

(6) That all wages and salaries payable to the employees in the said pulp and paper mill or in connection therewith, and all moneys payable by the said Company in connection with the Canadian industries shall be paid either in Canadian currency or in checks upon some Canadian bank.

(7) The Company agrees that it will not ask to have the order of the minister of public works against the construction of the pulp mill canceled until it is ascertained whether the said bill for the expropriation of the paper mill site will be passed at the present session of the legislature, and that it will not export fluid pulp until the completion and commencement of operation of the paper mill.

(8) That in addition to the 1,000 horsepower of electrical energy to which the Town is entitled for municipal purposes at the rate of \$14 per horsepower per annum under existing agreements, it will supply at any time on the Canadian side of the river, as and when demanded by the said Town on behalf of any person, company, or corporation, electrical energy at \$25 per horsepower per annum, subject to a reduction for the first three years to \$20 per horsepower per annum to any person or company taking such power in quantities of 500 horsepower or more, but when electrical energy is being supplied to independent Canadian users to an amount which, together with the power, both electrical and hydraulic, in use by the said Company or its subsidiary companies in its Canadian industries, and the power being supplied to the Town, shall be equal to one-half of the total power, both electrical and hydraulic, which is from time to time developed from the full flow of the waters of the Rainy River, from bank to bank thereof, then the Company shall be deemed to have fulfilled its obligations respecting the delivering of power upon the Canadian side of the river. The terms and conditions of measurement and user of power shall be reasonable, and shall be settled in the event of difference by the award of three electrical engineers of repute, one to be appointed by the Town, one by the Company, and the other by the other two or by the High Court of Justice for Ontario in the manner provided by the Ontario arbitration act.

## II. THE TOWN COVENANTS, PROMISES, AND AGREES.

(1) That forthwith, upon the execution of these presents, it will take the necessary steps to submit to a vote of the ratepayers a by-law fixing the rate of assessment upon the taxable property of the Company and its subsidiary companies to be utilized for the purposes of the industries hereinbefore referred to, and its present properties in the town of Fort Frances at \$25,000 (exclusive of school and local improvements rates) for a period of 10 years from the date of said by-law, but including the assessment for the year 1912.

(2) That it will include in said by-law a provision by way of bonus fixing assessment upon Company's property for the year 1911 at \$25,000 or will consent to an order allowing Company's appeal from its assessment for the year 1911.

(3) That it will recommend to the department of lands, forests, and mines the granting to the Company of reasonable booming privileges along the shore and in the waters of the Rainy River.

(4) That if the Company shall serve notice of expropriation upon the landowners interested in the lands abutting thereon, then the Town shall immediately take the necessary steps and proceedings to close the following streets in the said Town, or any part or parts thereof, that is to say: Front Street from the west boundary of Victoria Avenue (produced to the river front) to the north boundary of the lots hereinbefore described; Nelson Street from the west boundary of Mowat Street to the easterly boundary of Front Street, Hollands Street; Mowat Street from the south boundary of Nelson Street to Front Street, and Sinclair Street from the west boundary of Portage Avenue to Mowat Street, and that it will allow the Company to immediately erect its paper mill upon any portions of the streets to be so closed, and that upon the completion and commencement of operation of the said paper mill, as hereinbefore defined, the Town will execute a valid transfer to the Company of the lands comprised in the said streets or portions thereof to be closed.

(5) That it will recommend to the department of lands, forests, and mines the granting to the Company of the right to acquire the dock property lying to the west of water-power block No. 1, and known as lots Y, Z, and Z-a, for the purposes of the operation of the Company's said pulp mill.

(6) That if the said mills are erected and operated as aforesaid, it will assist the Company in procuring and maintaining from the Dominion Govern-

ment, the provincial government, and the board of railway commissioners licenses to export—.

(a) So much of the power developed by it from time to time as shall not be required for use on the Canadian side.

(b) So much of the power developed on the Canadian side as shall exceed one-half of the total power developed from the said river from time to time, and the Company shall not be required to operate the said pulp or paper mills on the Canadian side from time to time to any greater extent than it can operate them with the remainder of the one-half of the total power developed from the said Rainy River from time to time after deducting all power sold to others for use in Canada.

(7) That it will not oppose the said expropriation bill now pending before the Ontario Legislature, provided the descriptions of the lands therein is varied to conform to the description of the lands above set out.

(7-a) If the said bill be passed by the said legislature, the Town will not oppose the Company in procuring the abrogation of the said order of the minister of public works against the construction of the pulp mill.

(8) That the construction and operation of said mills, as aforesaid, and that the performance of this agreement on the part of the Company will fully satisfy the demands of the Town, and that it will not in the future block, hinder, or embarrass, or attempt to block, hinder, or embarrass prosecution of the Company's works or undertaking.

(9) It is further agreed and understood by and between the parties hereto that should the Company make default in the performance and observance of any of its covenants and agreements hereinbefore contained and set forth, then exemption from taxation to be provided by the said by-law shall forthwith cease and be determined, and the Company shall forthwith become liable to pay and shall pay to the Town taxes for all purposes on the value of its property as assessed for school purposes for each and every year subsequent to the said default and including the year in which the said default shall be made.

(10) This agreement shall inure to the benefit of and be binding upon the corporation of the said Town and upon the Company, its successors and assigns, and its subsidiary companies operating said pulp and paper mills.

In witness whereof the parties hereto have affixed their respective corporate seals by the hands of their respective officers.

ONTARIO & MINNESOTA POWER Co. (LTD.),

[SEAL.]

(Signed)

E. W. BACKUS, *President.*

(Signed)

WM. T. BROOKS, *Secretary.*

Witness:

(Signed)

R. J. YOUNG,

(Signed)

WASHINGTON GRAY.

MUNICIPAL CORPORATION OF THE TOWN OF FORT FRANCES,

[SEAL.]

(Signed)

D. C. MCKENZIE, *Mayor.*

(Signed)

J. W. WALKER, *Clerk.*

Witness:

(Signed)

R. J. YOUNG.



CORRESPONDENCE TRANSMITTED WITH THE APPLICATION.

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DEPARTMENT OF STATE,  
Washington, August 25, 1916.

HON. OBADIAH GARDNER,  
*Chairman American Section,  
International Joint Commission United States and Canada,  
Washington, D. C.*

SIR: I have the honor to inclose herewith, for presentation to the International Joint Commission, a communication I have addressed to the commission, inclosing for its consideration copies of the application of the International Lumber Co. for the approval of plans for booms in Rainy River, together with accompanying drawings relating thereto, and correspondence from the War Department on the subject. I am, sir,

Your obedient servant,  
For the Secretary of State:

ALVEY A. ADEE,  
*Second Assistant Secretary.*

(1 inclosure: Letter to International Joint Commission, August 24, 1916, with inclosures. 711.4216 Ia 22.)

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DEPARTMENT OF STATE,  
Washington, August 25, 1916.

The honorable the INTERNATIONAL JOINT COMMISSION,  
*United States and Canada, Washington, D. C.*

GENTLEMEN: I have the honor to transmit herewith for your consideration the inclosed copies of the application of the International Lumber Co. for the approval of plans for booms in Rainy River, together with the accompanying drawings relating thereto, and correspondence on the subject for the War Department. I am, gentlemen,

Your obedient servant,  
For the Secretary of State:

ALVEY A. ADEE,  
*Second Assistant Secretary.*

(3 inclosures: 47 copies of application of the International Lumber Co.; 2 blue prints and 1 tracing; 2 letters from War Department. dated July 31 and August 16, 1916, with indorsements. 711.4216 Ia 22.)

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WAR DEPARTMENT,  
OFFICE OF THE CHIEF OF ENGINEERS,  
Washington, July 31, 1916.

From: The Chief of Engineers.  
To: The Secretary of War.

Subject: Application of International Lumber Co. for approval of plans for booms in Rainy River, at International Falls.

1. There is transmitted herewith an application of the International Lumber Co., of Minneapolis, Minn., for the approval of plans for booms and sorting gaps in the American waters of the Rainy River at International Falls, Minn.

2. The Rainy River is an international boundary stream and the proposed booms are uses of boundary waters which, it is believed, require the approval of the International Joint Commission, constituted under the provisions of the treaty between the United States and Great Britain proclaimed May 13, 1910,

concerning boundary waters between the United States and Canada. The applicant has therefore furnished fifty (50) copies of the application, one of which is certified, and six copies of a drawing, two being on tracing linen, showing the work proposed, in pursuance of the rules of procedure of said commission.

3. The proposed booms are a modification of some built under permit of October 23, 1911, to the Minnesota & Ontario Power Co., which company and the applicant are under the same management, the interests of the two concerns being apparently identical.

4. The booms in places will extend to within 10 feet of the limit of the American waters, and the effect upon navigation will be to confine the use of the river, in the vicinity, to the waters on the Canadian side of the boundary, where there is ample room for such navigation as now exists or is likely to develop in the future, unless, of course, a material extension of booms on the Canadian side toward the boundary should curtail the available space and perhaps interfere with navigation. There is considerable traffic, mostly passenger, between International Falls and points on Rainy Lake, but, on account of the water being of much greater depth than the draft of boats engaged in navigation, it is not believed that confining the traffic to the Canadian side would have any effect upon the channel, nor would it have any effect upon the banks on the Canadian side.

5. It is recommended that the proposed bombs and sorting gaps, as shown and described on the accompanying drawing, be authorized by the Secretary of War, so far as they affect navigable waters of the United States, subject to the conditions of Form No. 4, W. D., J. A. G. O., with the time limit in condition 11 fixed at December 31, 1919.

6. It is further recommended that the authorization be transmitted to the Secretary of State for the consideration of the International Joint Commission, together with the 50 copies of the application and the 2 drawings on tracing linen, as required by paragraph 8 of the rules of procedure of the International Joint Commission, and that 3 copies of the authorization, on blue prints of the drawing, be furnished this office for the department files and the district offices.

W. M. BLACK,

*Chief of Engineers, United States Army.*

56 inclos., viz, 82962/22, certified copy of appln., and 49 copies, unmarked; 82962/18 and 23-27, drawings showing proposed booms.

[First indorsement.]

WAR DEPARTMENT,

JUDGE ADVOCATE GENERAL'S OFFICE,

*August 7, 1916.*

TO THE SECRETARY OF WAR:

1. This application by the International Lumber Co. for approval of plans for booms and sorting gaps on the American side of Rainy River at International Falls, Minn., involves one point which should be called to the Secretary's personal attention.

2. The Rainy River is a boundary stream lying between our country and Canada, the middle of the stream being the boundary line. The booms here proposed on our side extend practically to the middle and thus close to navigation one-half of the river. While this river, like the others between Canada and the United States, is navigable in common by both countries, still, even with the approval of the International Commission, I should doubt the advisability of shutting off all the navigable portion within our territorial jurisdiction. I should hesitate to approve of this application because, in our own interest, I should dislike so to exercise a municipal-law power as to relinquish a natural right of our own in reliance upon a conventional one granted by a neighboring nation, but also lest I might thereby presume upon the generosity, or subject myself to the criticism of our neighbor.

3. I recommend that the further views of the Chief of Engineers be solicited upon this particular consideration.

W. A. BETHEL,

*Acting Judge Advocate General.*

WAR DEPARTMENT,  
OFFICE OF THE CHIEF OF ENGINEERS,  
*Washington, August 16, 1916.*

Memorandum for the Secretary of War.

Subject: Application of the International Lumber Co.

1. Under the existing treaty between the United States and Great Britain all navigable boundary waters are free and open for the purposes of commerce to the inhabitants and to the vessels and boats of both countries equally. Along these waters Canadian and American vessels navigate without reference to international boundary lines, each having a common and equal right to the channels and connecting canals. In some places the bulk of transportation is through Canadian territory, at others through American territory. At Sault Ste. Marie the United States operates three large locks and canals, while Canada operates one lock and canal; but these are used by both countries on equal terms and conditions.

2. In the region where these booms are located the lumber business is the principal industry, and the assembling and sorting of forest products is essential to success. In 1911 a permit was granted the Minnesota & Ontario Power Co. to construct booms at this locality, but owing to the increase of business these have become inadequate, and the present application is for the enlargement and extension of the existing booms.

3. The Chief of Engineers fully considered the effect of the booms on navigation, including the fact that the structures would extend for a portion of their length within 10 feet of the boundary line, and, as ample space remained for present and future navigation in the use of which the people of both countries have free and common right, he could see no objection to the location so far as the interests of the United States are concerned. This feature of the matter was clearly set forth in paragraph 4 of his letter submitting the case to the Secretary of War.

4. The proximity of the booms to the boundary line makes it proper to refer the case to the International Joint Commission. Any objection on the part of Canada will be given consideration by that commission, but no such objection is anticipated as the project is one in which citizens of both countries are mutually and beneficially concerned.

5. Under the rules of the commission an application of this kind will not be considered unless it has been approved in advance by the proper department of the Government to which it pertains, and this makes it necessary for the War Department to act first. Approval by the War Department does not conclude the commission, and the authorization recommended by the Chief of Engineers will not be effective until after investigation and concurrence by the commission.

6. It is evident that should the use of the waters on the Canadian side of the boundary be denied to vessels or other means of navigation belonging to citizens of the United States, the prompt removal of the temporary structure herein proposed will easily afford the requisite remedy. No other objection to the grant of the desired permit seems to exist, and, as the case seems to involve no difficulty as to law or procedure, the recommendation of the fifth paragraph of my letter of July 31 is now renewed. In view of the delay that has occurred it seems desirable that action be expedited.

W. M. BLACK,  
*Chief of Engineers, United States Army.*

(57 inclosures accompanying, viz: 82926/22, certified copy of application, and 49 copies, unmarked; 82926/18 and 23-27, drawings showing proposed booms. 82926/26, memorandum of the Chief of Engineers, July 31, 1916, with indorsement by Judge Advocate General's Office, Aug. 7.)

[First indorsement.]

W. D. 825.5.

WAR DEPARTMENT, *August 17, 1916.*

Approved as recommended by the Chief of Engineers and respectfully referred to the honorable the Secretary of State for submission to the International Joint Commission for its consideration.

WM. M. INGRAHAM,  
*Assistant Secretary of War.*





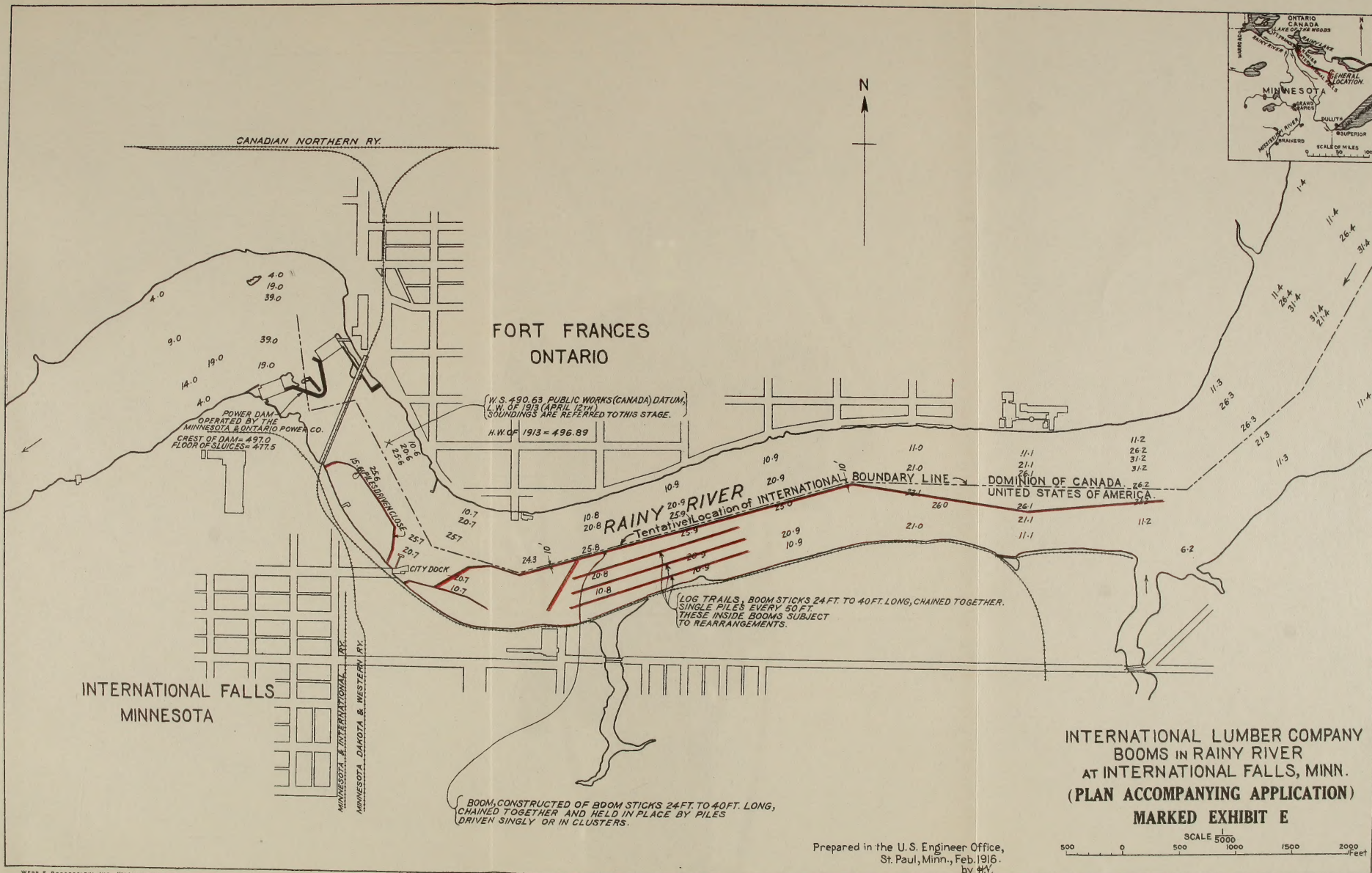
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CHESAPEAKE, VIRGINIA



INTERNATIONAL FALLS  
MINNESOTA

THE  
CITY OF  
CHESAPEAKE  
VIRGINIA

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CHESAPEAKE  
VIRGINIA







